

MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN
CONVENTION AGAINST CORRUPTION
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CO-OPERATIVE REPUBLIC OF GUYANA

FINAL REPORT

(Adopted at the March 25, 2011 plenary session)

**COMMITTEE OF EXPERTS OF THE MECHANISM FOR FOLLOW-UP ON THE
IMPLEMENTATION OF THE INTER-AMERICAN CONVENTION AGAINST
CORRUPTION**

**REPORT ON IMPLEMENTATION IN CO-OPERATIVE REPUBLIC OF GUYANA OF
THE CONVENTION PROVISIONS SELECTED FOR REVIEW IN THE THIRD ROUND,
AND ON FOLLOW-UP TO THE RECOMMENDATIONS FORMULATED TO THAT
COUNTRY IN PREVIOUS ROUNDS¹**

INTRODUCTION

1. Contents of the Report

[1] This report presents, first, a review of implementation in the Co-Operative Republic of Guyana of the provisions of the Inter-American Convention against Corruption selected by the Committee of Experts of the Follow-up Mechanism (MESICIC) for review in the third round: Article III, paragraphs 7 and 10, and Articles VIII, IX, X and XIII.

[2] Second, the report will examine follow-up to the recommendations that were formulated to the Co-Operative Republic of Guyana by the MESICIC Committee of Experts in the previous rounds, which are contained in the report on that country adopted by the Committee and published at the following web pages: http://www.oas.org/juridico/english/mec_rep_guy.pdf and http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

2. Ratification of the Convention and adherence to the Mechanism

[3] According to the official records of the OAS General Secretariat, the Co-Operative Republic of Guyana deposited the instrument of ratification of the Inter-American Convention against Corruption on March 15, 2001.

[4] In addition, the Co-Operative Republic of Guyana signed the Declaration on the Mechanism for Follow-up on the Implementation of the Inter-American Convention against Corruption on June 4, 2002.

I. SUMMARY OF THE INFORMATION RECEIVED

Response of the Co-Operative Republic of Guyana

[5] The Committee wishes to acknowledge the cooperation that it received throughout the review process from the Co-Operative Republic of Guyana and in particular from the Office of the President, which was evidenced, inter alia, in the response to the Questionnaire and in the constant willingness to clarify or complete its contents. Together with its response, the Co-Operative Republic of Guyana sent the provisions and documents it considered pertinent. The response, along with said provisions and documents, may be consulted at: http://www.oas.org/juridico/english/mesicic3_guy.htm

[6] For its review, the Committee took into account the information provided by the Co-Operative Republic of Guyana up to the date on which it submitted its response, and that furnished and requested

1. This Report was adopted by the Committee in accordance with the provisions of Article 3(g) and 25 of its Rules of Procedure and Other Provisions, at the plenary session held on March 25, 2011, at its Eighteenth meeting, held at OAS Headquarters, March 21-25, 2011.

by the Secretariat and the members of the review subgroup, to carry out its functions in keeping with its Rules of Procedure and the review Methodology.

II. REVIEW, CONCLUSIONS AND RECOMMENDATIONS ON IMPLEMENTATION BY THE STATE PARTY OF THE CONVENTION PROVISIONS SELECTED FOR THE THIRD ROUND

1. DENIAL OR PREVENTION OF FAVORABLE TAX TREATMENT² FOR EXPENDITURES MADE IN VIOLATION OF THE ANTICORRUPTION LAWS (ARTICLE III (7) OF THE CONVENTION)

1.1. Existence of provisions in the legal framework and/or other measures

[7] The Co-Operative Republic of Guyana has a set of provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, among which the following should be noted:

[8] – Statutory provisions such as the Revenue Authority Act, of which the following should be noted:³

[9] Section 9 which provides for the establishment of the Revenue Authority,⁴ which is the authority and legal entity established to execute its mandate and implement the administration of revenue collection of behalf of the state through provisions of statutes relating to revenue, such as the Income Tax Act, Property Tax Act, Customs Tax Act and Value Added Tax Act, Financial Institutions Act, Company Act and ancillary regulations.¹

[10] Section 10 (1) and (2) provides for its functions, Section 11 defines the composition of the Governing Board, made up of the Chairman, the Commissioner General of the GRA, Governor of the Bank of Guyana, the Director of the Budget Office and 2 others appointed by the Minister with expertise in this area. Section 19 addresses the issue of disclosure of interest.

[11]– Statutory provisions such as the Income Tax Act, of which the following should be noted:⁵

[12] Section 5 which provides that income tax shall be payable at the rate or rates specified for each year of assessment upon the income of any person⁶ accrued in or derived from Guyana or elsewhere and lists the type of income to be taxed.

2. For the purposes of this report, the MESICIC Committee of Experts defines favorable tax treatment as all exemptions and any deductible items used for the purposes of determining the income tax base, and other treatment that gives rise to favorable reductions in the amount of tax payable by taxpayers.

3. Revenue Authority Act, http://www.oas.org/juridico/english/mesicic3_guy_revenue.pdf

4. Response of Guyana to the Questionnaire for the Third Round, pg. 6: *“There are several administrative mechanisms in place which are established to detect corrupt or irregular practices by Tax Officers. These include: - Audit and Verification Department whose functions are to audit declarations and records of taxpayer for accuracy and completeness; - An Internal Audit Department responsible for reviewing the work of all the revenue departments to ensure compliance with standard operating procedures, regulations, orders and relevant statutes; - A Special Investigations Department to investigate taxpayers suspected of being in default of Tax Obligations; - Law Enforcement and Investigations Division which is tasked with the responsibility of investigating breaches of violations of all tax statutes in addition to enforcement activity to ensure compliance with these laws; - Internal Affairs Division whose duty includes but not limited to investigating alleged or perceived corruption of employees of the Revenue Authority, recommending appropriate sanctions and where appropriate referring matters to the Police /Director of Public Prosecutions for further investigations and preferment of charges if necessary.”*

5. Income Tax Act, http://www.oas.org/juridico/english/mesicic3_guy_income.pdf

[13] Section 11, which provides that tax shall be charged for each year of assessment upon the chargeable income⁷ of any person for the year immediately preceding the year of assessment.

[14] Section 10, which sets out the manner to compute income generally, and provides that when computing the income of any person for a year of income, all outgoings and expenses wholly and exclusively incurred during that year are to be considered.

[15] Section 16, which provides that deductions are allowed in ascertaining the chargeable income of any person incurred during the year immediately preceding the year of assessment by that person in the production of the income, such as sums expended by any person engaged in any trade, business, profession or vocation for replacing plant or machinery; any sum expended for repair of premises, plant and machinery employed in acquiring the income; bad debts incurred in any trade, business, profession or vocation; rates and taxes on immovable property; and such other deductions as may be prescribed by the Minister.

[16] Section 18, which seeks to ascertain the chargeable income of any person, provides a list of what cannot be deducted from the income of a person, such as any domestic or private expenses; any disbursement or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income; and any capital employed in improvements.⁸

[17] Section 70 (1) and (2), which provides that the Commissioner-General shall proceed to assess every person chargeable with the tax as soon as may be after the day to make prescribed for delivering the returns and that the Commissioner-General⁹ may accept a return and make an assessment accordingly; or refuse to accept the return and, to the best of his judgment, determine the amount of the chargeable income of the person and assess him accordingly.

[18] Section 72, which provides that where it appears to the Commissioner-General that any person liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Commissioner-General may, within the year of assessment or within seven years after the expiration thereof, assess the person at such amount or additional amount as according to his judgment ought to have been charged, and the provisions of the Income Tax Act as to notice of assessment, appeal, and other proceedings hereunder shall apply to that assessment or additional assessment and to the tax charged under it. In addition, if any fraud or any gross or willful neglect has

6. Section 5(1) of the Interpretation and General Clauses Act defines "person" to include a body of persons corporate or incorporate. "Body of persons" is further defined in Section 2(1) of the Income Tax Act as "*any body politic, corporate or collegiate, and any company, fraternity, fellowship, or society of persons whether corporate or not corporate.*"

7. Section 2(1) of the Income Tax Act sets out the following definition of "chargeable income": "*the aggregate amount of the income of, any person from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions pertaining to each source separately, and such appropriate exemptions and deductions as pertain to his aggregate income.*" Section 13 of the Income Tax Act also provides the exemptions from tax.

8. The country under review notes that the Income Tax Act sets out the only permissible deductions allowed for a person in ascertaining the chargeable income for any year of assessment. Any other deductions that are not expressly stated within the Act are not allowed.

9. Section 3(1) of the Income Tax Act provides that for the due administration of the Act, there shall be a Commissioner of Inland Revenue, a Senior Deputy Commissioner of Inland Revenue, two and such number of Assistant Commissioners of Inland Revenue Deputy Commissioners of Inland Revenue and other officers as may be requisite for the purpose. In addition, Section 3(2) of the Act establishes that any functions conferred by the Act on the Commissioner shall be exercised, as may be necessary, by the Senior Deputy Commissioner of Inland Revenue, any Deputy Commissioner of Inland Revenue or any Assistant Commissioner of Inland Revenue, according as the Commissioner may direct, and reference in the Act to the Commissioner shall be construed accordingly.

been committed by or on behalf of any person in connection with or in relation to tax for any year of assessment, an assessment in relation to such year of assessment may be made at any time.

[19] Section 60(3), which provides that the Commissioner-General may, by not less than fourteen days notice in writing, require any person to attend before him and answer questions with respect to the income, assets and liabilities of the person or of his wife and produce all books or other documents in his custody or under his control relating to such income, assets and liabilities. Section 60(5) establishes that any person who refuses, fails, or neglects to perform any act required by this section is guilty of an offence.¹⁰

[20] Section 111, which provides that any person who, for the purpose of obtaining any deduction, reduction or repayment in respect of tax for himself or for any other person; or in any return, account, or particulars, made or furnished with reference to tax, knowingly makes any false statement or false representations¹¹; is liable to a fine of fifteen thousand dollars; and treble the amount of the tax which has been undercharged in consequence of such false account, particulars, return, statement, information, or representation, or would have been so undercharged if the account, particulars, return, statement, information, or representation had been accepted as correct, and to imprisonment for six months, on summary conviction.

[21] Section 112, which provides that any person who obstructs or impedes, or insults, or molests the Commissioner -General, or other officer in the discharge of his duties, or in his official capacity, or in the exercise of his powers under the Income Tax Act is guilty of an offence.

[22] – Statutory provisions such as the Income Tax (Accounts and Records) Regulations, of which the following should be noted:¹²

[23] Section 2(1), which provides that every person carrying on any business, trade, profession or vocation is required to keep accounts and records thereof in such a manner as to give a true and correct view of the conduct of the business for the year preceding the year of assessment. Without prejudice to the generality of the foregoing the accounts and records shall show particulars of (a) all purchases; (b) all gross receipts or gross sales; (c) any sum received or expended and the transaction to which the receipt or expenditure relates; (d) any allowance claimed under section 17 of the Income Tax Act; (e) all accounts, including bank statements, held at any bank for the relevant period; (f) all assets and liabilities including debtors and creditors; (g) any payment made to any person not resident in Guyana; (h) shares held or owned by any person resident in Guyana; (i) shares held or owned by any person not resident in Guyana; and (j) annual stock taking.

[24] – Statutory provisions such as the Corporation Tax Act, of which the following should be noted:¹³

10. Section 109 provides that the penalty for this offence is, liable on summary conviction, a fine of fifteen thousand dollars.

11. Section 111(3) of the Income Tax Act provides that a false statement or false representation is presumed to have been knowingly made- (a) whenever it reveals a degree of negligence on behalf of the person making it which is inconsistent with his obligation under the Income Tax Act to make a true and correct return, account, statement, representation or declaration, or true and correct particulars; or (b) whenever a person fails to notify the Commissioner-General without unreasonable delay of any error or omission in any return, statement, declaration or representation, account or particulars furnished, delivered, made, kept or prepared, as the case may be, by him.

12. Income Tax (Accounts and Records) Regulations, http://www.oas.org/juridico/english/mesicic3_guy_income.pdf

13. Corporation Tax Act, http://www.oas.org/juridico/english/mesicic3_guy_corp.pdf

[25] Section 4, which provides that corporation tax shall be payable for each year of assessment at the rate specified in section 10,¹⁴ upon the profits of any company¹⁵ accruing in or derived from Guyana or elsewhere, and whether received in Guyana or not.

[26] Section 5, which provides for the general scheme of corporation tax. A resident company shall be chargeable to corporation tax on all its profits wherever arising whereas the profits that are chargeable to a non-resident company are from income directly or indirectly accrued in or derived from Guyana.

[27] Section 6(1), which provides that corporation tax shall be charged for each year of assessment upon the chargeable profits of the company arising in the year preceding the year of assessment.¹⁶

[28] Section 8(1), which provides that the chargeable profits of a company are to be computed in accordance with the income tax principles relating to the provisions of the Income Tax Act as applied by section 16 of the Corporation Tax Act.

1.2. Adequacy of the legal framework and/or other measures

[29] With respect to provisions related to the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[30] Notwithstanding, the Committee believes that it would be beneficial for the country under review to consider taking such steps as it deems appropriate to make it easier for the appropriate authorities to detect sums paid for corruption in the event that they are being used as grounds for obtaining such treatment. (see Recommendation 1.4(a) in Section 1.4 of Chapter II of this Report)

1.3. Results of the legal framework and/or other measures

[31] With respect to results in this field, the Co-Operative Republic of Guyana states that “*Numerous cases have been brought by the GRA in relation to violations of the tax laws, those that have resulted from acts of corruption especially in the area of Customs have been taken to the courts, and, others such as avoidance and evasion have been addressed through debt repayment schedules etc.*”¹⁷

[32] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this area, the Committee will formulate a recommendation to the country under review so that, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the

14. Section 10 of the Corporation Tax Act sets the following rates: 45% of the chargeable profits of a commercial company and 35% in the case of any other company. However, the country under review informed the following, on March 17, 2011: “*the rates were amended by the Fiscal Enactments (Amendment) Act which amended the Corporation Tax Act and reduced the rates from 45% to 40% of the chargeable profits of a commercial company and from 35% to 30% in the case of non-commercial companies. This act also amended the deductible income tax ceiling from 420,000 GYD to \$480,000 GYD (equivalent of \$ 2400 USD) in the Income Tax Act*”.

15. Company is defined under Section 2 of the Income Tax Act as a body corporate or unincorporated but does not include a partnership

16. Section 7 provides the exemptions from corporation tax.

17. Response of the Co-Operative Republic of Guyana to the Questionnaire for the Third Round, pg. 7: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

recommendations made in this report in relation thereto. (see Recommendation 1.4(b) in Section 1.4 of Chapter II of this Report)

1.4. Conclusions and recommendations

[33] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 7 of the Convention:

[34] The Co-Operative Republic of Guyana has considered and adopted measures intended to create, maintain and strengthen standards on the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws, as described in section 1 of Chapter II of this report.

[35] In light of the comments formulated in the above-noted sections, the Committee suggests that the Co-Operative Republic of Guyana consider the following recommendation:

[36] Strengthen the standards and measures for the denial or prevention of favorable tax treatment for expenditures made in violation of the anticorruption laws. To comply with this recommendation, the Co-Operative Republic of Guyana could take the following measures into account:

- a. Consider adopting the measures deemed appropriate to make it easier for the appropriate authorities to detect sums paid for acts of corruption in the event that they are being used as grounds for obtaining such treatment, such as the following: (see Section 1.2 of Chapter II of this Report)
 - i. Manuals, guidelines or directives that will guide them in reviewing those applications, so that they are able to verify that the applications contain the established requirements, to confirm the truthfulness of the information provided, and to confirm the origin of the expenditure or payment on which the claims are based.
 - ii. The possibility of accessing the sources of information necessary to conduct those verifications and confirmations, including requests for information from financial institutions.
 - iii. Continue to develop electronic programs that facilitate data consultation and cross-checking of information whenever necessary for the purpose of fulfilling their functions.
 - iv. Institutional coordination mechanisms that will provide the timely collaboration needed from other authorities, on such aspects as certifying the authenticity of the documents submitted with the applications.
 - v. Training programs designed specifically to alert officials to the methods used to disguise payments for corruption and to instruct them in ways of detecting such payments in the applications.
 - vi. Channels of communication so that they may promptly report to those who must decide on favorable treatment and warn them of the anomalies detected or of any irregularity that could affect the decision.

- b. Select and develop, through the tax authorities that process applications for favorable tax treatment and the other authorities or organs with jurisdiction in that respect, procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow up on the recommendations made in this report in relation thereto. (See section 1.3 of Chapter 2 of this Report)

2. PREVENTION OF BRIBERY OF DOMESTIC AND FOREIGN GOVERNMENT OFFICIALS (ARTICLE III (10) OF THE CONVENTION)

2.1. Existence of provisions in the legal framework and/or other measures

[37] The Co-operative Republic of Guyana has a set of provisions related to prevention of bribery of domestic and foreign government officials, among which the following should be noted:

[38] – Statutory provisions such as the Companies Act of 1991,¹⁸ of which the following should be noted:

[39] Section 157, which provides that a company shall cause to be kept proper books of account in accordance with the Sixth Schedule,¹⁹ with respect to (a) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure relate; (b) all goods and purchases of goods of the company; and (c) the assets and liabilities of the company. Proper books of account are not deemed to be kept with respect to the matters referred to above if there are not kept such books as are necessary to give a true and fair view of the state of the company's affairs and to explain its transactions. Moreover, Section 157(3) provides that these records shall be kept at the registered office of the company or at such other places as the directors of the company think fit and shall at all times be open to inspection by the directors.

[40] Section 172, which provides for the appointment of an auditor to a company. This auditor must be a practicing member of the Institute of Chartered Accountants of Guyana and hold a practicing certificate from said Institute. Section 171 further provides for the disqualification of a person from being an auditor of a company if he is not independent of the company, any of its affiliates or the directors or officers of any such company or its affiliates.

[41] Section 181, which provides that an auditor must make the examination necessary to enable him to report in the prescribed manner on the financial statements required by this Act.

[42] Section 182, which provides that present or former directors, officers, employees or agents of the company must furnish to the auditor 1) such information and explanations; and 2) such access to records, documents, books, accounts and vouchers of the company or any of its subsidiaries, which, in the opinion of the auditor, will enable him to make the examination and report required under Section 181, and that the directors, officers, employees or agents are reasonably able to furnish.

[43] Section 183(1), which provides the director or an officer of a company shall notify the company's auditor of any error or mis-statement in a financial statement that the auditor or a former auditor of the company has reported upon. Moreover, Section 183(2) provides that when the auditor or a former

18. The Companies Act, http://www.oas.org/juridico/english/mesicic3_guy_companies.pdf. Article 2 provides that a 'company' means a body corporate that is incorporated or continued under the Act. Furthermore, 'body corporate' includes a company or other body corporate wherever or however incorporated, other than a corporation sole.

19. The Sixth Schedule regulates the financial disclosure, form and content of company accounts. See Companies Act, p.p. 379-400, http://www.oas.org/juridico/english/mesicic3_guy_companies.pdf

auditor of a company is notified or becomes aware of an error or mis-statement in a financial statement upon which he has reported to the company and, in his opinion, the error or mis-statement is material, he shall inform each director of the company accordingly. In those cases, the directors shall prepare and issue revised financial statements or otherwise inform the shareholders of the error or misstatement. If the company is a public company or one that is required to comply with section 156, the Registrar must also be informed.

[44] Section 185, which provides that: (1) the auditors shall make a report to the members on the accounts examined by them, and on every balance sheet, every profit and loss account and all group accounts laid before the company in general meetings during their tenure of office. This report shall state whether in the auditors' opinion the company's balance sheet and profit and loss account (and the group accounts, if it is a holding company submitting group accounts) have been properly prepared in accordance with the provisions of this Act, and whether in their opinion a true and fair view is given; (2) the auditors' report shall be read before the company in general meeting and shall be open to inspection by any member; (3) in preparing their report under this section, the auditors have a duty to carry out such investigations as will enable them to form an opinion on whether proper books of account have been kept by the company and proper returns adequate for their audit have been received from branches not visited by them; and whether the company's balance sheet and profit and loss account are in agreement with the books of accounts and returns; if in his/her opinion they are not, the auditors shall state that fact in their report; and (4) if the auditors fail to obtain all the information and explanations which to the best of their knowledge and belief are necessary for the purposes of their audit, they shall state that fact in their report.

[45] Section 192, which provides that the records required under the Act to be prepared and maintained may be kept in a bound or loose-leaf form or in a photographic film form or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

[46] Section 193, which provides that a company and its agents, with regard to the records to be prepared and maintained under the Act in respect of the company, are to take reasonable precautions to 1) prevent their loss or destruction; 2) prevent falsification of entries in; and 3) facilitate detection and correction of inaccuracies.

[47] Section 443 which provides that any officer or contributory of a company being wound up who destroys, mutilates, alters or falsifies any books, papers, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or document belonging to the company with intent to defraud or deceive any person, shall be guilty of an offence.

[48] Section 518, which provides that any person who makes or assists in making a report, return, notice or other document that contains an untrue statement of a material fact or omits to state a material fact required in the report, return, notice or other document is guilty of an offence and liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for six months.

[49] Section 520, which provides that a person is guilty of an offence and liable on summary conviction to a fine of thirty thousand dollars and to an imprisonment for six months who, without reasonable cause, contravenes section 193. Moreover, a director or officer is guilty for knowingly contravening section 183.

[50] – Statutory provisions such as the Income Tax Act, of which the following should be noted:²⁰

[51] Section 65 (1), which provides that every person carrying on any business, trade, profession or records vocation shall keep proper accounts and records of his income and expenditure in the manner prescribed by the Minister to enable the Commissioner-General to make an assessment upon him under this Act, and such person shall retain the accounts and records for a period of at least eight years after the completion of the transactions, acts or operations to which they relate.

[52] – Statutory provisions such as the Institute of Chartered Accountants of Guyana Act of 1991 and its By-laws,²¹ of which the following should be noted:

[53] Section 3(1), which incorporates the Institute of Chartered Accountants of Guyana.

[54] Section 4, which provides that the objects of the Institute are, among others, to promote and increase the knowledge, skill and proficiency of its members and its registered students, as well as to regulate their discipline and professional conduct by maintaining a strict standard of professional ethics.

[55] Sections 10 and 11, which establish the qualifications, requirements and procedures for registration of Chartered Accountants.

[56] Section 16, which establishes that the Council of the Institute may apply disciplinary measures in the following cases, among others, against any person registered as a Chartered Accountant who: “(a) is convicted of any criminal offence involving dishonesty or any other offence which in the opinion of the Council renders that person unfit to practise as a Chartered Accountant; (...) (d) is found, upon due inquiry by the Council (i) to have procured his registration under this Act as a result of any misleading, false or fraudulent representation; or (ii) to have been guilty, in a professional respect, of gross impropriety or infamous conduct, or to have been guilty, in the performance of his professional duties, of gross negligence or gross incapacity, or to have been guilty of any act, default or conduct discreditable to the profession; (...)”. The Council’s disciplinary measures include, among others: the removal of the name of such person from the Register; the suspension of the registration for any period not exceeding one year; as well as the censure of such person.

[57] Section 18, which prohibits non-registered persons to practice accountancy. Any person who contravenes this section is liable on summary conviction to a fine of nine thousand dollars and imprisonment for three months (in case of a first offence) and to a fine of eighteen thousand dollars and imprisonment for six months (in case of a subsequent offence).

[58] With regards to the Statements of Standard Accounting and Auditing Practices, Section 25.1 of the Institute of Chartered Accountants of Guyana Act of 1991 (By-laws) provides that “*The Council may from time to time issue Statements of Standard Accounting and Auditing Practices as approved by the council to be followed by the members of the Institute*”. In addition, Section 25.2 establishes that “*On the recommendation of the Technical committee or any other Committee appointed by the Council for that purpose, the Council may adopt Accounting Standards and Auditing Practices issued by the International Accounting Standards Committee or any Registered Body, subject to any necessary modification and adaptations.*”

20. Income Tax Act, http://www.oas.org/juridico/english/mesicic3_guy_income.pdf

21. The Institute of Chartered Accountants of Guyana Act 1991 and its By-Laws (1992), http://www.oas.org/juridico/english/mesicic3_guy_account.pdf and http://www.oas.org/juridico/english/mesicic3_guy_inst.pdf

[59] In addition, there are also provisions in the Cooperative Societies Act,²² which regulate cooperative societies; the Securities Industry Act,²³ which regulates the security market in Guyana; and the Financial Institutions Act and its amendments,²⁴ which regulate banks and other financial institutions. It should also be noted that the Auditor General is empowered to carry out audits of the books, records, returns and of any other document relating to the accounts of all bodies or entities in which the State has a controlling interest.²⁵

2.2. Adequacy of the legal framework and/or other measures

[60] With respect to the provisions that refer to the prevention of bribery of domestic and foreign government officials that the Committee has examined, based on the information available to it, they constitute a set of measures relevant for promoting the purposes of the Convention.

[61] Notwithstanding, the Committee considers it appropriate to express some comments regarding the advisability of developing and complementing certain measures that might be useful for the country under review to consider.

[62] The Committee believes it would be useful for the country under review to consider holding awareness campaigns targeted at persons responsible for maintaining accounts and verifying their accuracy, on the importance of observing the rules issued to guarantee the truthfulness of those records and the consequences of violation, and also to consider implementing training programs designed specifically for auditors in publicly held companies and other types of associations who are required to keep accounts, to instruct them in ways of detecting acts of bribery in the course of their work (see Recommendation 2.4(a) in Section 2.4 of Chapter II of this Report).

[63] In addition, the Committee believes that it would be useful for the country under review to consider holding awareness and integrity promotion campaigns that target the private sector and to consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Recommendation 2.4(b) in Section 2.4 of Chapter II of this Report).²⁶

[64] The Committee also believes that it would be beneficial for the country under review to consider strengthening measures as it deems appropriate to make it easier for the organs and agencies responsible for the prevention and/or investigation of noncompliance with measures designed to safeguard the accuracy of accounting records to detect sums paid for corruption concealed in those records (see Recommendation 2.4(c) in Section 2.4 of Chapter II of this Report).

22. Cooperative Societies Act, http://www.oas.org/juridico/english/mesicic3_guy_coop.pdf

23. Securities Industry Act, http://www.oas.org/juridico/english/mesicic3_guy_secu.pdf

24. Financial Institutions Act, http://www.oas.org/juridico/english/mesicic3_guy_fin_act.pdf; Financial Institutions Act (Amendment) 1996, http://www.oas.org/juridico/english/mesicic3_guy_fin1996.pdf; and Financial Institutions Act (Amendment) 2004, http://www.oas.org/juridico/english/mesicic3_guy_fin2004.pdf.

25. Constitution of the Co-operative Republic of Guyana, Section 224, http://www.oas.org/juridico/spanish/mesicic2_guy_constitution.pdf.

26. The country under review informed the following, on March 17, 2011: “websites of a number of agencies, most particularly Guyana Revenue Authority and the Bank of Guyana provide information on policies and guidelines that assist in informing the public and creating greater awareness”

2.3. Results of the legal framework and/or other measures

[65] With respect to results in this field, the Co-operative Republic of Guyana states that no statistical data is available.²⁷

[66] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee will formulate a recommendation to the country under review so that, through the organs and agencies responsible for prevention and/or investigation of violations of measures designed to safeguard the accuracy of accounting records and ensure that publicly held companies and other types of associations required to establish internal accounting controls do so in the appropriate manner, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto (see Recommendation 2.4(d) in Section 2.4 of Chapter II of this Report).

2.4. Conclusions and recommendations

[67] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to the implementation in the country under review, of the provisions contained in Article III, paragraph 10 of the Convention:

[68] The Co-operative Republic of Guyana has considered and adopted measures intended to create, maintain and strengthen provisions for the prevention of the bribery of domestic and foreign government officials, as described in section 2 of Chapter II of this report.

[69] In light of the comments formulated in the above-noted sections, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendation:

[70] Strengthen the standards and measures on the prevention of bribery of domestic and foreign government officials. To comply with this recommendation, the Co-operative Republic of Guyana could take the following measures into account:

- a. Conduct awareness campaigns that target individuals responsible for the entry and accuracy of accounting records, on the importance of abiding by the standards in force to ensure the veracity of said records and the consequences of their violation, in addition to implementing training programs specifically designed to instruct those who work in the area of internal control in publicly held companies and other types of associations required to keep accounting records, on how to detect corrupt acts through their work (see Section 2.2 of Chapter II of this Report).
- b. Consider holding awareness and integrity promotion campaigns that target the private sector and consider adopting measures such as the production of manuals and guidelines for companies on best practices that should be implemented to prevent corruption (see Section 2.2 of Chapter II of this Report).
- c. Consider the adoption of the instruments necessary to facilitate the detection, by the organs and entities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, of sums paid for

27. Response of the Co-Operative Republic of Guyana to the Questionnaire for the Third Round, pg. 9: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

corruption that are concealed in those records, such as the following (See section 2.2 of chapter II of this report):

- i. Review methods, including account inspections and analysis of periodically requested information, by which to detect anomalies in accounting records that could indicate the payment of sums for corruption;
 - ii. Investigation tactics, such as follow-up on expenditures, crosschecking of information and accounts, and requests for information from financial entities in order to determine if such payments occurred;
 - iii. Manuals, guidelines or directives for those organs and agencies that do not yet have them, on how to review accounting records in order to detect sums paid for corruption;
 - iv. Computer programs that provide easy access to the necessary information to verify the veracity of accounting records and of the supporting documents on which they are based; and
 - v. Institutional coordination mechanisms that enable those organs or entities to easily obtain the necessary collaboration from other institutions to verify the veracity of accounting records and of the supporting documents on which they are based or to establish their authenticity.
 - vi. Training programs for the officials of these organs and entities, specifically designed to alert them to the methods used to disguise payments for corruption in those records and to instruct them on how to detect them.
- d. Select and develop, through the authorities responsible for preventing and/or investigating violations of measures designed to safeguard the accuracy of accounting records and protect their contents, as well as the other authorities or entities that have responsibility in this area, procedures and indicators, when appropriate and where they do not yet exist, to analyze the objective results obtained in this regard and to follow-up on the recommendations formulated in this report in relation thereto (see Section 2.3 of Chapter II of this Report).

3. TRANSNATIONAL BRIBERY (ARTICLE VIII OF THE CONVENTION)

3.1. Existence of provisions in the legal framework and/or other measures

[71] The Co-operative Republic of Guyana has not yet established transnational bribery as an offense as provided in Article VIII of the Convention.

[72] However, the country under review notes, with respect to Article VIII (3), that although it has not criminalized transnational bribery, the Co-operative Republic of Guyana, nevertheless, provides international cooperation in these cases, citing, for example, national laws and treaties on mutual assistance in criminal matters which it has ratified.^{28 29}

28. Response of Guyana to the Questionnaire for the Third Round, pgs. 11 – 12: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

29. Regarding the criminal liability of legal entities, Section 44 of the Interpretation and General Clauses Act provides that “Where an offence committed by a body corporate under any written law is proven to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was

3.2. Adequacy of the legal framework and/or other measures

[73]Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish transnational bribery as an offense as provided in Article VIII of the Convention. (see Recommendation 3.4.1 in Section 3.4 of Chapter II of this Report)

[74]Similarly, the Committee believes it advisable for the country under review to consider the possibility of adopting the measures necessary to ensure, with respect the provisions that would, in due course, prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood by the term “government official of another state.” (see Recommendation 3.4.2 in Section 3.4 of Chapter II of this Report)

3.3. Results of the legal framework and/or other measures

[75] With respect to results in this field, the Co-Operative Republic of Guyana states the following: “*Guyana’s Ministry of Foreign Affairs does not have any record of a request for assistance in transnational bribery.*”³⁰

3.4. Conclusions and recommendations

[76] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article VIII of the Convention:

[77] The Co-operative Republic of Guyana has not adopted certain measures on the offense of transnational bribery as provided in Article VIII of the Convention, as described in Chapter II, Section 3 of this report.

[78] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendations:

- 3.4.1. Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of transnational bribery as described in Article VIII of the Convention, which defines it as the offering or granting, directly or indirectly, by nationals of a state party, persons having their habitual residence in its territory, and businesses domiciled there, to a government official of another state, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage, in connection with any economic or commercial transaction, in exchange for any act or omission in the performance of that official's public functions. (See Chapter II, Section 3.2 of this report).
- 3.4.2. Consider the possibility of adopting the necessary measures to ensure, with respect to the provisions that ultimately do prohibit and punish the acts described in Article VIII of the Convention, that there is clarity as regards what should be understood

purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

30 Response of Guyana to the Questionnaire for the Third Round, pg. 12: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

by the term “government official of another state.” (See Chapter II, Section 3.2 of this report).

4. ILLICIT ENRICHMENT (ARTICLE IX OF THE CONVENTION)

4.1 Existence of provisions in the legal framework and/or other measures

[79] The Co-operative Republic of Guyana has not yet established illicit enrichment as an offense as provided in Article IX of the Convention.

[80] However, the country under review notes, with respect to Article IX (3), that although it has not criminalized illicit enrichment, the Co-operative Republic of Guyana, nevertheless, provides international cooperation in these cases, citing, for example, national laws and treaties on mutual assistance in criminal matters which it has ratified.³¹

4.2 Adequacy of the legal framework and/or other measures

[81] Based on the observations contained in the preceding section, the Committee will formulate the relevant recommendations to the country under review so that, subject to its Constitution and the fundamental principles of its legal system, it establish as an offense the conduct described in Article IX of the Convention. (See Recommendation 4.4.1 in Section 4.4 of Chapter II of this Report)

4.3 Results of the legal framework and/or other measures

[82] With respect to results in this field, the Co-Operative Republic of Guyana states the following: “*The Guyana Ministry of Foreign Affairs does not have any record of a request for such assistance in relation to illicit enrichment.*”³²

4.4 Conclusions and recommendations

[83] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article IX of the Convention:

[84] The Co-operative Republic of Guyana has not adopted certain measures on the offense of illicit enrichment as provided in Article IX of the Convention, as described in Chapter II, Section 4 of this report.

[85] In light of the comments formulated in that section, the Committee suggests that the country under review consider the following recommendation:

- Criminalize, subject to its Constitution and the fundamental principles of its legal system, the conduct of illicit enrichment as described in Article IX of the Convention. (See Chapter II, Section 4.2 of this report).

31. Response of Guyana to the Questionnaire for the Third Round, pg. 13:
http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

32. Response of Guyana to the Questionnaire for the Third Round, pg. 13:
http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

5. NOTIFICATION OF CRIMINALIZATION OF TRANSNATIONAL BRIBERY AND ILLICIT ENRICHMENT (ARTICLE X OF THE CONVENTION)

5.1 Existence of provisions in the legal framework and/or other measures

[86] The Co-operative Republic of Guyana has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention, as was noted in Chapter II, Sections 3 and 4 of this Report.

5.2 Adequacy of the legal framework and/or other

[87] Bearing in mind that the country under review has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX of the Convention, respectively, the Committee will recommend that, when it does so, it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention. (See the Recommendation in Chapter II, Section 5.3 of this Report).

5.3 Conclusions and recommendation

[88] On the basis of the analysis conducted in foregoing sections 5.1 and 5.2, the Committee offers the following conclusions and recommendation with respect to implementation in the country under review of the provisions contained in Article X of the Convention.

[89] The Co-operative Republic of Guyana has not criminalized transnational bribery and illicit enrichment as provided in Articles VIII and IX, respectively, of the Convention. Accordingly, when it does so, the Committee recommends that it notify the OAS Secretary General of that fact, in accordance with Article X of the Convention.

6. EXTRADITION (ARTICLE XIII OF THE CONVENTION)

6.1. Existence of provisions in the legal framework and/or other measures

[90] The Co-operative Republic of Guyana has a set of provisions related to extradition, among which the following should be noted:

[91] - Statutory provisions such as the Fugitive Offenders Act and its 2009 amendment.³³ The following provisions should be noted:

[92] Section 3(1), which provides that the Act shall apply in respect of extradition from and to Guyana to and from every Commonwealth country.³⁴

[93] Section 4, which provides that the Act shall apply to the Government of a foreign territory with which the Government of Guyana has made arrangements relating to the extradition of fugitive offenders, whether they were made after or prior to the commencement of the Act (including those made

33. Fugitive Offenders Act 1998, http://www.oas.org/juridico/english/mesicic3_guy_fugitive.pdf. Fugitive Offenders (Amendment) Act 2009, http://www.oas.org/juridico/english/mesicic3_guy_fugitive_2009.pdf.

34. Section 2(a) of the Fugitive Offenders Act provides the following definition for a "Commonwealth country": "any country mentioned in article 47 (3) of the Constitution, and includes- (i) a colony, territory, protectorate or other dependency of any such country; (ii) a territory for the international relations of which any such country is responsible; and (iii) a ship or aircraft of, or registered in, any such country." The following State Parties to the Inter-American Convention against Corruption are Commonwealth Countries: Antigua and Barbuda, the Bahamas, Belize, Canada, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and Trinidad and Tobago.

between the Government of the United Kingdom and the Government of a foreign territory, prior to the 26th May, 1966, which extends to and remains in force in Guyana).³⁵ Those who fall under this provision are referred to as a “treaty territory” under the Act.³⁶

[94] Section 36, which provides that even in the absence of an arrangement as is referred to in section 4(1) or (2) between the Government of Guyana and the Government of any foreign territory, upon the request of the Government of that foreign territory, the Minister may issue an authority to proceed with the case in accordance with the provisions of the Act as if the request for the extradition had been received from the Government of a treaty territory, if the Minister is satisfied that “(a) the person whose extradition is sought is accused of, or is alleged to be unlawfully at large after conviction of, any offence in such foreign territory, which offence if committed in a treaty territory would be an extraditable offence; (b) the aforesaid person is, or is suspected to be in or to be arriving in, Guyana; and (c) it is in the interests of justice that the said person should be extradited to the foreign territory referred to in paragraph (a)”.

[95] Section 5(1), which provides that an extraditable offence is one “where the act or omission constituting the offence, however described, constitutes an offence, and is punishable with death or imprisonment for life or for a term of not less than two years, under the law of Guyana and of the Commonwealth country or treaty territory making to the Government of Guyana the request for extradition or of the Commonwealth country or treaty territory to which the request for extradition is made by the Government of Guyana.”

[96] Section 7, which provides that a person accused of an extraditable offence or who is alleged to be unlawfully at large after conviction of an extraditable offence in any Commonwealth country or treaty territory may be arrested and returned.

[97] Section 8(1), which provides that a person shall not be extradited under the Act or committed or held in custody for the purposes of such extradition if it appears that: i) the offence in respect of which that person is accused or was convicted is an offence of a political character;³⁷ ii) that the request for extradition is in fact made for the purpose of prosecuting or punishing on account of race, tribe, sex, religion, nationality or political opinions; or iii) if extradited, he/she might be prejudiced at trial or punished, detained or restricted in his/her personal liberty by reason of race, tribe, sex, religion, nationality or political opinions. In addition, section 8(2) provides that a person will not be returned if it appears that if charged in Guyana, he would be entitled to be discharged under any rule of law relating to a previous acquittal or conviction. Moreover, Section 8(3A)(b) establishes that a person shall not be extradited if there is “any credible evidence that there is a likelihood of the fugitive offender being extradited to a third country from the Commonwealth country or treaty territory.”

35. See the British Statutory Rules and Order 1935 governing extradition, which governs Guyana’s relations in those matters with the United States of America, among others: http://www.oas.org/juridico/english/mesicic3_guy_1935.pdf

36. Section 2(f) of the Fugitive Offenders Act provides the following definition of “treaty territory”: “a foreign territory in respect of extradition to and from which, from or to Guyana, the provisions of this Act apply with or without modifications, limitations or conditions by virtue of section 4 and includes- (i) a colony, territory, protectorate or other dependency of any such foreign territory; (ii) a territory for the international relations of which any such foreign territory is responsible; and (iii) a ship or aircraft of, or registered in, any such foreign territory”.

37. Section 8(4) of the Fugitive Offenders Act 1998 provides that the offence of a political character does not include “an offence against the life or person of the Head of State, or a Minister, of Guyana or any Commonwealth country or treaty territory or any related offence referred to in section 5 (3), or an offence established under an international convention to which any Commonwealth country or treaty territory, as the case may be, and Guyana are parties and declared by such convention as an offence not of a political character for the purposes of extradition.”

[98] Section 13, which provides the procedure for arresting a person pursuant to a warrant issued under section 12 (Authority to Proceed). Under section 13(2), a Magistrate can issue a provisional warrant for the arrest of the person accused of an extraditable offence or alleged to be unlawfully at large after conviction of an extraditable offence. A warrant issued under Section 13 may be executed in any part of Guyana.

[99] Section 17(1), which provides that on application of *habeas corpus*, the High Court may order the person committed to be discharged from custody if it appears to the High Court that it would, having regard to all circumstances, be unjust or oppressive to extradite the person by reason of a) the trivial nature of the offence; b) the passage of time since the person is alleged to have committed it or to have become unlawfully at large; the accusation was not made in good faith or in the interests of justice; or any other sufficient cause.

[100] Section 29(1), which provides that a person remanded or committed to custody shall be committed to a like institution as a person charged with an offence before the court of committal.

[101] – The British Statutory Rules and Order 1935, which, among others, governs Guyana’s relation with the United States of America in extradition matters. Article 3 of the specific order regarding the United States of America establishes a list of extraditable offenses, among which bribery (passive and active), fraud, concealment of property, as well as participation in any of those crimes are found.

6.2. Adequacy of the legal framework and/or other measures

[102] With respect to provisions related to extradition, the Committee notes that based on the information available to it, they can be said to constitute a set of pertinent measures for promoting the purposes of the Convention.

[103] The Committee nevertheless believes it is necessary, pursuant to Article XIII(6), of the Convention, for the country under review to consider adopting the relevant measures to inform a requesting state that its extradition for offenses covered in the Convention has been denied because it deems it has jurisdiction over the offence and it has decided to submit the case to its competent authorities for the purpose of prosecution, and to report on the final result of the case. (see Recommendation 6.4(a) in Section 6.4 of Chapter II of this Report)

6.3. Results of the legal framework and/or other measures

[104] With respect to results in this field, the Co-operative Republic of Guyana states the following: “*Guyana has not made a request to another state for extradition of any persons who may have committed these offences. Most of the requests for extradition from Guyana are drug related and other crimes, such as murder and rape, not transnational bribery or illicit enrichment.*”³⁸

[105] Guyana did not provide information on extradition requests received from another State Party to the Convention relating to acts of corruption cases.³⁹

[106] Considering that the Committee does not have additional information other than that referred above that might enable it to make a comprehensive evaluation of the results of this topic, the Committee

38 Response of Guyana to the Questionnaire for the Third Round, pg. 15:
http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

39 The country under review informed the following, on March 17, 2011: “*there are no such requests in relation to acts of corruption*”.

will formulate a recommendation to the country under review so that, through the organs or agencies responsible for processing incoming extradition requests, it consider the selection and development of procedures and indicators, when appropriate and where they do not yet exist, to analyze objective results obtained in this regard and to follow-up on the recommendations made in this report in relation thereto. The Committee will formulate a recommendation in this regard. (see Recommendation 6.4(b) in Section 6.4 of Chapter II of this Report)

[107] In addition, the Committee considers that it might be useful for the country under review to consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases. This could consist, among other measures, in the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (see Recommendation 6.4(c) in Section 6.4 of Chapter II of this Report)

6.4. Conclusions and recommendations

[108] Based on the review conducted in the foregoing sections, the Committee offers the following conclusions and recommendations with respect to implementation in the country under review of the provisions contained in Article XIII of the Convention:

[109] The Co-operative Republic of Guyana has adopted measures regarding extradition as provided in Article XIII of the Convention, as described in Chapter II, Section 6 of this report.

[110] In light of the comments formulated in that section, the Committee suggests that the Co-operative Republic of Guyana consider the following recommendations:

- a. Consider the convenience of establishing relevant measures to inform, in due course, a requesting state that its extradition request for offenses covered by the Convention has been denied because the State deems that it has jurisdiction over the offence and it has decided to submit the case to its competent authorities for the purposes of prosecution, and to report on the final result of the case. (See Section 6.2 of Chapter II of this Report)
- b. Select and develop, through the competent organs or agencies, procedures and indicators, when appropriate and where they do not yet exist, to verify the follow up to the recommendations formulated in this report with respect to this area; and to analyze objective results obtained in relation to the steps that have been taken to respond to extradition requests formulated by other States Parties to the Convention for the investigation or prosecution of the crimes that have been criminalized pursuant thereto. (See Section 6.3 of Chapter II of this Report)
- c. Consider the utility of the Inter-American Convention against Corruption for extradition purposes in corruption cases, which could consist of, among other measures, the implementation of training programs detailing the possibility of applying the Convention to extradition cases, specifically designed for the administrative and judicial authorities with competence in this area. (See Section 6.3 of Chapter II of this Report)

III. OBSERVATIONS REGARDING THE PROGRESS MADE WITH IMPLEMENTING THE RECOMMENDATIONS ISSUED IN REPORTS FOR PREVIOUS ROUNDS

FIRST ROUND⁴⁰

[111] With respect to implementation of the recommendations issued to the Co-operative Republic of Guyana in the report from the First Round on which it did not supply information with regard to progress in their implementation in its response to Section II of the Questionnaire for the Second Round, or on those for which it supplied information but which the Committee considered in Section IV of the report for that round that they needed further attention, and on the basis of the information available to it dealing with further progress with their implementation made after that report, the Committee notes the following:

1. STANDARDS OF CONDUCT AND MECHANISMS TO ENFORCE COMPLIANCE (ARTICLE III, PARAGRAPHS 1 AND 2 OF THE CONVENTION)

1.1. Standards of conduct intended to prevent conflicts of interest and enforcement mechanisms

Recommendation 1.1:

In light of the comments made in that section, the Committee recommends that the State under review consider strengthening the implementation of the provisions on conflicts of interest, and ensure that the laws on this matter are applicable to all public officials and employees, so as to permit the practical and effective application of a public ethics system.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁴¹

- a. *Formulate specific standards, when appropriate, to limit the actions of public servants in specific situations, in accordance with the functions and activities of each institutions and the specific nature and importance of the different offices, and mechanisms for enforcing them.*
- b. *Develop a system of admission to and retention in public service, incorporating measures that allow the resolution of cases in which private interests conflict with the public interest, including the strengthening of the bodies that regulate this area, and consider preventive mechanisms to ensure that no appointments are made which are contrary to the rules in force on incompatibility.*
- c. *Strengthen the relevant bodies, in order to improve their ability to ensure compliance with the requisites defined for the office and seek to ensure that no appointments are made in the public service that are contrary to the rules in force on ineligibility and incompatibility.*

40. The references to sections appearing in italics in the transcribed recommendations and measures refer to the report from the First Round of Review.

41. Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 26 – 31, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

- d. *Develop, when necessary, other mechanisms to identify or detect any causes that might occur in the course of the exercise of public functions and that might give rise to conflicts of interest, such as officials declaring their private interests.*
- e. *Develop, when necessary, provisions that restrict the participation of former public officials in situations that involve taking undue advantage of that condition, for a reasonable period of time.*
- f. *Consider strengthening the rules in force governing sanctions, incorporating other types of administrative sanctions other than those already envisaged, such as suspension, the relinquishment of the private interests in conflict, nullity of any decisions by a person in such a position; and withdrawal from official involvement in the matter.*

[112] With respect to measure (a) of the foregoing recommendation, in its response, the country under review presents the following information:⁴²

[113] *“The Audit Act 2004 (section 6 refers to conflict of interest in relation to the person who holds the office of the Auditor General) does address the recommendations at 1 a, d, e and f. Furthermore, the Auditor General must declare to the Parliamentary Public Accounts Committee all pecuniary interests and whether they are conflict of interest issues or not”.*

[114] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (a) of the foregoing recommendation, taking into account that the report of the First Round had indicated that *“there does not appear to be any specific legislation which, in keeping with the organic structure of the State, regulates the criteria governing the general standards in force on specific aspects, rank and the particular requirements of each of the public administration entities, as well as the mechanisms for enforcing them”*.⁴³ The information provided is limited to a general conflict of interest provision regarding the Auditor General; however it provides no specific standards for its application, as required by the measure.

[115] With respect to measures (b) and (c) of the foregoing recommendation, in its response, the country under review presents information that it considers related, as follows:⁴⁴

[116] *“In relation 1, b and c, Guyana advises that in relation to these recommendations the Public Service Ministry and the Public Service Commission continue to make efforts to ensure that appointments are done in compliance with the Public Service Rules (1987) and the Public Service Commission’ Rules (1998). (A copy of the latter was handed over on September 16, 2009).*

[117] *Of note is that the constitutional revision in 2003 provided for the establishment of a Standing Parliamentary Committee to Appoint Members of Commissions whereby through and after a*

42. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, p. 17, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf. The Committee takes note that the legislation cited was not made available for review by the Committee during the First Round. Nevertheless, it is being cited here although the legislation was in force prior to the date this topic was reviewed.

43. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, p. 4, http://www.oas.org/juridico/english/mec_rep_guy.pdf

44. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, p. 17, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf. The Committee takes note that the legislation cited was not made available for review by the Committee during the First Round. Nevertheless, it is being cited here although the legislation was in force prior to the date this topic was reviewed.

consensual parliamentary mechanism two persons would be nominated from civil society for the President to appoint as members of the Public Service Commission. The President after 'meaningful consultation' with the Leader of the Opposition would appoint 3 other members as well as one member appointed by the President in his own deliberate judgement (sic). The members elect their chairperson and deputy chairperson.

[118] *Since the enactment of these constitutional reforms, the PSC is appointed in this manner and functions with a full time chair and secretariat with budgetary allocations. This has contributed to greater confidence in the system of appointments, promotions and discipline.*

[119] *The Committee is asked to note again that the Government drafted new Public Service Rules, but efforts to date to reach consensus with the trade union movement have been unsuccessful”.*

[120] The Committee takes note of the need for the country under review to give additional attention to the implementation of measures (b) and (c) of the foregoing recommendation, taking into account that the report of the First Round indicated that the Committee “*found no substantial rules in the information provided regarding requirements for entering public administration, including obligations prohibiting a person from receiving two or more salaries paid by the State, and, in general, which contemplate provisions designed to resolve cases in which private interests conflict with the public interest*”⁴⁵ and that the information provided by the country under review does not contain regulations on this subject.

[121] With respect to measure (d) of the foregoing recommendation, in its response, the country under review did not present information additional to that analyzed by the Committee in the report from the First Round.⁴⁶

[122] The Committee takes note of the need for the country under review to give additional attention to the implementation of measures (d) of the foregoing recommendation.

[123] With respect to measure (e) of the foregoing recommendation, in its response, the country under review presents information that it considers related, as follows:⁴⁷

[124] *“The Cooperative Republic of Guyana reaffirms the position taken in its previous reports that the Procurement Act 2003 and Regulations 2003 (in particular Sections 55 and 60 which refers to conflict of interest and offences), the Fiscal Management and Accountability Act 2003 (sections 10, 11, 49 and 85) hold the Ministers and all public servants accountable even after the person/s cease/s to hold office*

[125] (...)

45. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, p. 4,

http://www.oas.org/juridico/english/mec_rep_guy.pdf

46. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, p. 17, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

47. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pgs. 16 - 17, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf. The Committee takes note that the legislation cited was not made available for review by the Committee during the First Round. Nevertheless, it is being cited here although the legislation was in force prior to the date this topic was reviewed.

[126] *In relation to 1 e, various statutes such as the Audit Act, the Procurement Act, the Integrity Commission Act provide for restriction of former public servants participation and/ or require their accountability up to 5 years after demitting their post”.*

[127] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (e) of the foregoing recommendation, taking into account that the measure refers to the regulation of post-employment conflicts of interest.⁴⁸

[128] With respect to measure (f) of the foregoing recommendation, in its response, the country under review presents information that it considers related, as follows:⁴⁹

[129] *“In relation to 1 f as it relates to elected officials, all Members of Parliament are proscribed from having a pecuniary interest on a matter before the Parliament and they are prohibited from receiving monies for services for a person appearing/summoned before a Parliamentary Committee. This is clearly stated in the Standing Orders of the Parliament and any violation of this can be brought to the National Assembly’s attention for disciplinary action.”*

[130] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (f) of the foregoing recommendation, taking into account that the measure refers to the mechanisms that guarantee the applicability of the standards and the system of sanctions provided for in Section 27(2) of the Integrity Commission Act.⁵⁰

1.2. Standards of conduct to ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions and enforcement mechanisms

Recommendation 1.2:

In light of the comments made in that section, the Committee recommends that the State under review perform an analysis on the enforcement and the efficiency of the standards of conduct for the conservation and proper use of the public resources as well as of the mechanisms that exist in Guyana to ensure compliance with these standards as instruments for the prevention of corruption. As a result of this review, the country under review could consider the adoption of measures to promote, facilitate, consolidate or ensure the application of these instruments for that end.

[131] With respect to the implementation of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the foregoing recommendation, the following:⁵¹

48. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, pg. 5,

http://www.oas.org/juridico/english/mec_rep_guy.pdf

49. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 17, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

50. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the First Round, pg. 5,

http://www.oas.org/juridico/english/mec_rep_guy.pdf

51. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 20, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf. The Committee takes note that the legislation cited was not made available for review by the Committee during the First Round. Nevertheless, it is being cited here although the legislation was in force prior to the date this topic was reviewed.

[132] *“Guyana reiterates its positions presented in the June 2008, September 2009 and March 2010 reports that ‘the implementation of the Procurement Act, the Fiscal Management and Accountability Act and the Audit Act coupled with the introduction and establishment of the expanded committee system in Parliament allowing for scrutiny and oversight of every sphere of government, through an empowered Public Accounts Committee and the four sectoral committees (economics, social services, natural resources and foreign relations), have improved fiduciary oversight.’*

[133] *This expanded committee system which was established in 2003 has been evolving and demonstrating its usefulness to the greater efficiency, transparency and accountability of government and use of resources.*

[134] *The Public Accounts Committee, chaired by the Opposition, meets weekly where (...) Accounting Officers appear before the Committee to answer questions on the expenditures of the budgeted allocation to their sector/agencies. The PAC submits its findings to the National Assembly which must be put to the floor for a vote and the Minister of Finance must respond to the report within 90 days through the submission of a Treasury Memorandum advising of government’s action in relation to these findings. The latter measure was introduced in the new 2006 Standing Orders and is being adhered to.*

[135] *Since the introduction and implementation of these revised Standing Orders in the 9th Parliament, Ministers including the Prime Minister, have been called to appear before the 4 sectoral committees to answer issues relating to policy, administration and performance of their sectors.*

[136] *In addition the meetings of the Public Accounts Committee and the 4 sectoral committees of the Parliament are open to the public and the media. These Committees also submit annual reports to the National Assembly which are available to the public.*

[137] *As reported previously the Audit Office of Guyana and the Auditor General report directly to Parliament and are under the ‘general supervision of the Public Accounts Committee’ as prescribed in the constitution*

[138] *Considerable technical assistance, funding, administrative and legislative reforms and energy have been expended on the strengthening and improving fiduciary oversight, transparency and accountability from 2004 to the present with the GoG/IDB funded Financial Fiscal Management Programme, the GOG/IDB Public Service Reform programme, and the Millennium Challenge Account/MCC.*

[139] *In addition to what was reported in the June 2008, September 2009 and March 2010 reports, Guyana has improved and strengthened its tax administration system, introduced greater fiscal oversight and faster more efficient business start up/registration. The latter reducing the time to start up businesses from 42 days to 12 days will not only contribute to a better investment climate and economic growth but it has certainly reduced opportunities for corruption.*

[140] *There is now a restructured Guyana Revenue Authority; reorganized and more effective tax, customs and VAT revenue systems; more strategic economic forecasting capacity; enhanced fiscal policy analytical capability; modernized Parliamentary fiduciary oversight, public accounts and library research capacity; upgraded procurement systems/procedures; and simplified, streamlined business registration process . The Millennium Challenge Corporation website indicated improvement in Guyana’s indicators on Ruling Justly and Corruption, etc.*

[141] Furthermore, Guyana wishes to advise the committee that after a 3 year project, it has in 2010 rebased its national accounts formerly using base year 1988 to base year 2006. A copy of the publication on this important step forward in producing accurate data was shared in the March 2010 update as Appendix 1. This production is the first comprehensive report of its national accounts since 1960 when it commenced collecting statistics of its national accounts.

[142] As reported previously, the National Procurement and Tender Administration website (see <http://nptaguyana.org/procurement>) has continued to improve; greater information is shared with the public, tenders are posted including the minutes of the tender awards. The most recent minutes at the time of reporting are dated July 27, 2010. One can access minutes dating back to 2007 and the tender notices posted at the time of reporting were August 9, 2010 whilst the contract awards are publicly announced weekly.⁵² These initiatives continue to be part of an ongoing process to improve transparency and accountability.”

[143] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into account that the Public Accounts Committee reports are not available for consultation on the website of the Parliament of the Cooperative Republic of Guyana.⁵³ Additionally, the Auditor General’s Report for 2008 indicates a series of findings which should be remedied, such as the lack of reporting and accounting for all gifts to Ministries, Departments and Regions; overpayment to contractors; lack of maintenance of log books; and the overpayment of salaries to staff and deductions to agencies.⁵⁴

1.3. Standards of conduct and mechanisms concerning measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware

Recommendation 1.3:

In light of the comments made in that section, the Committee suggests that the State under review consider strengthening the existing mechanisms that require public officials to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware to the appropriate authorities.

52. The country under review informed the following, on March 17, 2011: “Minutes are updated regularly and as of February 10, 2011, the minutes of Feb 1. 2011 were posted.”

53. As of November 16, 2010, no committee reports were available for consultation at the Parliament of the Co-operative Republic of Guyana Website: http://www.parliament.gov.gy/c_reports.php. However, the country under review informed the following, on March 17, 2011: “All reports of the parliamentary committees (tabled, debated and passed) and those submitted to the Parliament such as the MOF Treasury Memorandum in response to the PAC reports are available to all Members of Parliament, public and media on hard copies. It should be noted that the project to modernize the Guyana Parliament website and make it an interactive forum is not complete to date.”

54. See “Report of the Auditor General on the Public Accounts of Guyana and on the Accounts of the Ministries/Departments/Regions for the Fiscal Year ended 31 December 2008”, available at: <http://www.audit.org.gy/reports.html>.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁵

- a. *Establish measures and systems that require all public servants to report to appropriate authorities acts of corruption in the performance of public functions of which they are aware, and facilitate compliance with this obligation through whatever measures are considered appropriate.*
- b. *Adopt and implement protection measures for public servants to encourage them to report acts of corruption in good faith.*
- c. *Review the application of the provision contained in section 28(3) of the Integrity Commission Act, in order to ensure that it does not become an impediment to, or inhibit, discourage, or intimidate public officials from reporting acts of corruption in the performance of public functions of which they are aware.*
- d. *Implement adequate measures, including training for public servants on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith.*

[144] With respect to measures (a), (b) and (c) of the foregoing recommendation, in its response, the country under review presents the following information:⁵⁶

[145] *“Guyana has nothing further to report concerning (a) and (b). The recommendation at (c) is under review by the Attorney General Chambers(...).”*

[146] The Committee takes note of the need for the country under review to give additional attention to the implementation of measures (a), (b) and (c) of the foregoing recommendation.

[147] With respect to measure (d) of the foregoing recommendation, in its response, the country under review presents the following information:⁵⁷

[148] *“As reported previously in 2009 over 500 members of the Guyana Revenue Authority have undergone various training programmes to improve the efficiency and transparency of the operations of various departments, including the Customs Department, income tax and corporate tax departments, and the VAT unit. Training is also on going in the Audit Office.*

[149] *Training is on-going and constant throughout the public service to improve the efficiency and effectiveness of delivery of services and thereby reduce the opportunities and areas for corruption.”*

[150] The Committee takes note of the need for the country under review to give additional attention to the implementation of measures (d) of the foregoing recommendation, taking into consideration that the information provided does not contain details of the training programs and whether they

55. Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 26 – 31, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

56. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 20, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

57. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 20, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

included instruction on how to report acts of corruption, and the requisites for reporting them, and on protection mechanisms for those who report such cases in good faith.

2. SYSTEMS FOR REGISTERING INCOME, ASSETS AND LIABILITIES (ARTICLE III, PARAGRAPH 4 OF THE CONVENTION)

Recommendation 2:

In light of the comments made in that section, the Committee recommends that the State under review consider strengthening the systems for declaring income, assets and liabilities.

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁵⁸

- a. *Maximize the use of systems to study the contents of the declarations of income, assets and liabilities, and to adopt suitable measures to detect and prevent conflicts of interest and cases of illicit enrichment, using modern technologies, whenever possible, to expedite their presentation and improve systems, analysis or investigation of cases.*
- b. *Consider the possibility of making adjustments or legal reforms to the power granted by the Integrity Commission Act to the Commission or the President, whichever is applicable, in order to impose the appropriate administrative sanctions without the authorization of another organ or official.*
- c. *Consider adjustments or legal reform of the existing system of sanctions, including other conducts, such as the late presentation of declarations or other types of sanctions.*
- d. *Review the possibility of extending the five-year term established in section 23 (b) of the Integrity Commission Act as a limit for instituting legal proceedings in respect of such unlawful acts committed by an official who no longer performs public functions.*
- e. *Consider the advisability of granting to a body or official other than the President the administration, verification and application of the system for declaring assets and liabilities in respect of members of the Integrity Commission.*
- f. *Regulate the conditions, procedures and other relevant aspects as regards making disclosures of income, assets, and liabilities public, as appropriate, in accordance with the fundamental principles of the domestic legal system.*

[151] With respect to the implementation of measures (a) and (c) of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of measure (a), the following:⁵⁹

58. Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 26 – 31, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

59. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pg. 21, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

[152] *“Guyana’s reports of June 2008 and March 2010 advise that GRA has improved the Income Tax Department and established a VAT system with a fully staffed and operational Department. Working persons and companies are issued TIN (Taxpayer Identification Numbers) and certificates. This new system coupled with the computerization of the GRA linked with the National Insurance Scheme and the Deeds Registry for registration of companies has enhanced the effectiveness of the GRA and improved its investigative capacity. With the assistance of technical and financial support from the Millennium Challenge Corporation these efforts in 2009 have been further strengthened.*

[153] *The new Anti-Money Laundering and Countering Financing of Terrorism Act, Act No. 13 of 2009, enacted on August 14, 2009 and the Money Transfer Agencies (Licensing) Agencies Act 2009, Act No. 20 of 2009 also enacted on August 14, 2009 have further strengthened the capacity of the State to address these recommendations.”*

[154] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (a) of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into account that no information was provided on how the strengthening of the Guyana Revenue Authority as well as the new Anti-Money Laundering legislation has impacted on the detection and prevention of conflicts of interest.

[155] Additionally, the Committee takes note of the need for the country under review to give additional attention to the implementation of measure (c) of the foregoing recommendation, taking into account that the information provided does not address the issue of sanctions for the late presentation of declarations of income, assets and liabilities to the Integrity Commission.

[156] With respect to measures (b), (d) and (e) of the foregoing recommendation, in its response, the country under review presents the following information:⁶⁰

[157] *“Guyana is not convinced that the recommendation at (d) is necessary at the moment but it will continue to keep it under review. In relation (b) and (e) these continue to be under review.”*

[158] The Committee takes note of the need for the country under review to give additional attention to the implementation of measures (b), (d) and (e) of the foregoing recommendation.

[159] With respect to measure (f) of the foregoing recommendation, in its response, the country under review presents the following information:⁶¹

[160] *“In relation to 2 f, it should be pointed out that all constitutional post holders, elected officials such as Members of Parliament including members of constitutional commissions, salaries and stipends are public knowledge as their remuneration (sic) is published by order in the National Assembly and published in the Official Gazette.”*

[161] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (f) of the foregoing recommendation, taking into account that the information provided did not refer to the regulation of the conditions, procedures and other relevant

60. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 21, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

61. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 21, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

aspects as regards the publication of the declarations of income, assets and liabilities presented to the Integrity Commission.

3. OVERSIGHT BODIES FOR THE SELECTED PROVISIONS (ARTICLE III, PARAGRAPHS 1, 2, 4 AND 11 OF THE CONVENTION)

Recommendation 3:

Taking into account the considerations stated in that section, the Committee suggests that the State under review consider strengthening or creating oversight bodies to enforce compliance with the provisions of Chapter III, paragraphs 1, 2, 4 and 11 of the Convention, providing them with the resources needed to carry out their functions in full and establishing the mechanisms necessary for the institutional coordination of their actions and their periodic evaluation and follow-up.

[162] With respect to the implementation of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:⁶²

[163] *“Guyana continues through administrative measures to strengthen the oversight bodies. The GOG/IDB Citizen Security Programme and the Justice Sector Reform Programme are both in operation and changes are being implemented which are in accord with this recommendation.*

[164] *In keeping with Chapter 111, paragraphs 1, 2, 4, Guyana is in compliance -- it has enshrined in the Constitution, legislation and administratively Parliamentary and extra-parliamentary mechanisms for oversight. These have been highlighted earlier in the progress reports on the First Round in June 2008, September 2009, March 2010 and herein.*

[165] *In keeping with paragraph 11, through the assistance of citizens and public servants as well as greater transparency and accountability, Guyana has been able to bring more persons involved in corrupt activities before the courts, including Chief Accounting Officers, Customs Officers, and law enforcement officers over the last 2 years.”*

[166] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into account that it did not receive any information on the strengthening of the Integrity Commission or detailed information on the strengthening of the other oversight bodies mentioned in the report of the First Round.

62. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pg. 22, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

4. MECHANISMS TO PROMOTE THE PARTICIPATION BY CIVIL SOCIETY AND NONGOVERNMENTAL ORGANIZATIONS IN EFFORTS TO PREVENT CORRUPTION (ARTICLE III, PARAGRAPH 11 OF THE CONVENTION)

4.1. General participation mechanisms

Recommendation 4.1:

Given the recommendations formulated with respect to each of the following mechanisms, consider the need for Guyana to reassess and strengthen its general approach for encouraging the participation of civil society and non governmental organizations in efforts to prevent corruption.

[167] With respect to the implementation of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following.⁶³

[168] *“As reported in June 2008 Guyana has developed layers of citizen participation and involvement including the establishment of a Guyana Chapter of Crime Stoppers, a broad-based National Commission on Law and Order, the inclusion on state boards of representatives of the business community, labour movement, religious bodies, and representatives of the parliamentary political parties, etc.,. Those measures continue to be in operation.*

[169] *Sectorally(sic) and at regional and community levels there is a robust involvement of communities in various issues of national and neighbourhood concerns. Community members are outspoken on their views of corruption, non- or poor performance of elected officials and expose shoddy work by contractors.*

[170] *The media plays an active role in this area as well.”*

[171] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into account the need to continue to further those efforts.

4.2. Mechanisms for access to information

Recommendation 4.2:

The Committee believes that Guyana should consider preparing and approving legal provisions supporting access to information.

63. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, p. 22, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

Measures suggested by the Committee that require information on their implementation or which required additional attention within the Framework of the Second Round:⁶⁴

- a. *Develop and regulate the processes through which requests are received in order to respond to them on a timely basis, for appeals in cases where requests are denied, and establish sanctions in the event of failure to comply with the obligation to furnish public information.*
- b. *Consider the creation or adoption of systems to ensure that the public has access, when appropriate, to information on public government organizations and their financial and program planning activities, specifically including oversight bodies responsible for matters covered by this report.*

[172] With respect to the implementation of measure (a) of the foregoing recommendation, in its response, the country under review did not present additional information that to that already reviewed by the Committee in the Report of the First Round. As such, the Committee reiterates the need for the country under review to give additional attention to implementation thereto.

[173] With respect to the implementation of measure (b) of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the measure, the following:⁶⁵

[174] *“First of all there has been a significant improvement in the availability of government information over the last 2 years, this has resulted from improved data collection and reporting capacity across the state sector.*

[175] *In addition to the submission of all government policies, annual reports and accounts of government agencies to the Parliament, government policy, programmes and data are posted on an array of various websites. Examples of key ministries/ agencies that have websites and which recently expanded and improved them – the Guyana Revenue Authority, the National Procurement and Tender Administration, the Guyana Information Agency, Go-Invest, Low Carbon Development Strategy, Ministries, and state agencies etc).*

[176] *The Opposition actively uses the Question period in the Order Paper at each sitting to raise issues with government Ministers. In this 9th Parliament (2006-2011) over 475 written questions have been posed to Ministers and answered in the National Assembly.*

[177] *After each Cabinet meeting, the Head of the Presidential Secretariat holds a post-cabinet press conference advising the public of Cabinet decisions including its ‘no objection’ to awards of contracts recommended by the National Procurement and Tender Administration.*

[178] *Guyana will be obtaining two fibre optic cables (one installed by a private telephone company through Suriname and the other by the government in cooperation with Brazilian firms) which will expand and enhance the country’s connectivity and thus improve access to information. A vast array of government information which is now posted on ministries/ state agencies’ websites will reach*

64. Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pgs. 26 – 31, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

65. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pgs. 23-24, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

more people in the country especially the far interior and therefore enhance their access to information and contribute to greater transparency and oversight of government.

[179] *On August 4, 2010 the Procurement (Amendment) Act No. 13 of 2010 was enacted to allow for the use of the electronic media for advertising tender notices. As a result, the government as of August 11, 2010 announced that it had launched a website <http://www.eprocure.gov.gy> on which all government advertisements and notices will be placed including the publication of notices, job vacancies, and the procurement process for goods and services as a part of its ICT strategy and its incremental progress towards e-governance.”*

[180] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (b) of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into account that some of the mentioned efforts are still in progress, such as the improvement of public government websites as well as Guyana’s connectivity infrastructure. Additionally, no information was provided on oversight bodies, such as the Integrity Commission.

4.3. Mechanisms for consultation

Recommendation 4.3.1:

Develop standards and procedures capable of supporting consultation mechanisms to encourage civil society organizations and citizens to provide opinions and proposals to be taken into account.

Recommendation 4.3.2:

Design and implement programs to publicize consultation mechanisms, and when appropriate, provide civil society, nongovernmental organizations and public officials and employees with the training and instruments necessary for effective implementation of those mechanisms.

[181] With respect to the implementation of the foregoing recommendations, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:⁶⁶

[182] *“The policy of the government is grounded in the philosophy of consultation with the citizens at the national, regional and community levels as well as community meetings at the grass roots in keeping with Article 13 of the Guyana Constitution.*

[183] *The constitution also enshrines the participation of civil society through a consensual parliamentary mechanism in the appointment of members to the Judicial, Police and Public Service Commissions and the 4 Human rights Commissions – the Rights of the Child Commission, the Women and Gender Equality Commission, the Indigenous Peoples Commission and the Ethnic Relations Commission. The Ethnic Relations Commission, the Women and Gender Equality Commission and the Rights of the Child Commission were appointed and functioning. The members of the Indigenous Peoples Commission were recently approved on August 5, 2010 by the National Assembly and this commission will be appointed and functioning before year end.*

66. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 24, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

[184] *All policies and legislative reforms go through layers of consultations with the relevant non-state actors before they are adopted or taken to the National Assembly. Many bills (22 in 2009 and 2010) were tabled and sent to Parliamentary Special Select committees for intense scrutiny and amendments and 10 invited submissions from the public.”*

[185] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendations as well as the need for it to continue to give attention thereto.

4.4. Mechanisms to encourage participation in public administration

Recommendation 4.4:

The Committee considers it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms to encourage participation in the public administration.

[186] See section 4.3 above.

4.5. Mechanisms to encourage participation in the follow-up of public administration

Recommendation 4.5:

The Committee considers it useful to formulate recommendations 4.3.1 and 4.3.2 of this section with respect to the mechanisms for the follow-up of the public administration.

Review whether the sanction for the malicious filing of false complaints established by Section 28(3) of the Integrity Commission Act is an impediment to the participation of civil society.

[187] See section 4.3 above.⁶⁷

5. ASSISTANCE AND COOPERATION (ARTICLE XIV OF THE CONVENTION)

Recommendation 5.1:

Ensure that both the mutual assistance treaties signed and the Convention are applied in specific cases of corruption.

[188] With respect to the implementation of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as steps which contribute to progress in the implementation of the recommendation, the following:⁶⁸

[189] *“As reported previously Guyana signed and ratified the Inter-American Convention on Mutual Assistance in Criminal Matters as well as the UN Convention on Corruption and the CARICOM*

67. The country under review informed the following, on March 17, 2011: *“In relation to the recommendation 4.5 whilst from the point of view of legally removing the impediment, the Committee may not appreciate how open the media is in Guyana, letter columns, blog sites, internet radio, make observations, allegations, complaints, accusations about public officials far and beyond what the IC Act provides for. This appears to be the preferred route by the public as many time it is under the guise of anonymity.”*

68. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 25, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

Cooperation Treaty on Matters of Mutual Criminal Matters. The latter Treaty has been enacted into domestic legislation. The Mutual Assistance in Criminal Matters Act No. 38 of [2009] was enacted in June 9th, [2009]”.

[190] The Committee takes note of the steps taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, since no information was provided regarding the application of those MLA treaties in specific cases of corruption.

Recommendation 5.2:

Promote the adoption and effective application of the Mutual Assistance in Criminal Matters Bill.

[191] With respect to the implementation of the foregoing recommendation, in its response, the country under review presents information additional to that reviewed by the Committee in the Report from the Second Round. In this regard, the Committee notes, as a step which contribute to progress in the implementation of the recommendation, the following:⁶⁹

[192] – The adoption of the Mutual Assistance in Criminal Matters Act No. 38 of 2009, enacted on June 9th, 2009.⁷⁰

[193] The Committee takes note of the step taken by the country under review to advance in its implementation of the foregoing recommendation as well as the need for it to continue to give attention thereto, since no information was provided regarding the application of the aforementioned Act.

Recommendation 5.3:

Determine and prioritize specific areas where technical cooperation by other States party might be useful in strengthening their capacities for preventing, detecting, investigating and punishing acts of corruption.

[194] With respect to recommendations 5.3, in its response, the country under review presents the following information:⁷¹

[195] *“This matter is under constant review between Guyana and its bilateral, regional and multi-lateral partners. Guyana has also asked the OAS for technical assistance in drafting cybercrime legislation and training support for detection and prosecution.”*

[196] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendation.

69. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 25, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

70. Available at: http://www.oas.org/juridico/english/mesicic3_guy_mutual.pdf

71. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 25, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

6. CENTRAL AUTHORITIES (ARTICLE XVIII OF THE CONVENTION)

Recommendation 6.1:

Appoint the Central Authority provided for in Article XVIII of the Convention for the purposes of international assistance and cooperation foreseen therein, either through approval of the provisions in this area found in the Mutual Assistance in Criminal Matters Bill referred to in the response to the questionnaire, or by taking the appropriate administrative decisions.

Recommendation 6.2:

Formally notify the General Secretariat of the OAS the appointment of the central authority, pursuant to the prescribed formalities.

Recommendation 6.3:

Ensure that once the authority has been appointed it has the resources it needs to adequately fulfill its functions.

[197] With respect to recommendations 6.1, 6.2 and 6.3, in its response, the country under review presents the following information:⁷²

[198] “*Guyana is in compliance with these recommendations*”

[199] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendations, bearing in mind that no information was provided on the appointment of a Central Authority to the Inter-American Convention against Corruption and that the General Secretariat of the OAS has not yet been formally notified of such appointment, pursuant to the prescribed formalities.

7. GENERAL RECOMMENDATIONS

Recommendation 7.1:

Design and implement, as appropriate, training programs for public officials responsible for applying the systems, standards, measures and mechanisms considered in this report, to guarantee that they are properly understood, handled and applied.

Recommendation 7.2:

Select and develop procedures and indicators, as appropriate, for verifying follow-up of the recommendations contained in this report, and notify the Committee accordingly through the Technical Secretariat. For said purposes, Guyana could take into account the list of broader indicators applicable to the inter-American system that were available for selection, as necessary, by the State under review, and which have been published by the Technical Secretariat of the Committee on the OAS Internet website. The State under review could also take into account any information arising from the review of mechanisms developed pursuant to recommendation 7.3 below.

72. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, p. 25, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

Recommendation 7.3:

Implement the recommendations contained in this report and develop, as appropriate and where none exist, procedures to review the mechanisms mentioned herein.

Recommendation 7.4:

Optimize the general statistical records of the oversight bodies so as to allow objective review of the results of the legal framework and other measures that are adopted.

[200] With respect to recommendations 7.1, 7.2, 7.3 and 7.4, in its response, the country under review presents the following information that it considers related:⁷³

[201] *“Guyana is making efforts to be in compliance with these recommendations. With improved reporting from the oversight bodies, greater capacity being developed within state agencies, use of modern information-based technology and information-management systems, changes in policy making and efforts to rectify weaknesses of a systemic or administrative nature are easier and more effectively addressed. The introduction of TRIPS (Tax Revenue Integrated Processing System) and IFMAS (the Integrated Financial Management and Accounting System) across all ten administrative regions and government agencies have vastly strengthened revenue collection, more efficient management of financial resources, improved budget forecasting, planning and implementation.*

[202] *The legislative agenda in 2010 includes new interventions to improve the efficiency of the system.”*

[203] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendations, bearing in mind that it has not received information on training programs for public officials, nor information on progress regarding procedures and indicators for follow-up on the implementation of the Convention.

SECOND ROUND⁷⁴

[204] The Committee offers the following observations with respect to the implementation of the recommendations made to the Co-operative Republic of Guyana in the Report from the Second Round, based on the information available to it:

1. SYSTEMS OF GOVERNMENT HIRING AND PROCUREMENT OF GOODS AND SERVICES (ARTICLE III (5) OF THE CONVENTION)

1.1. Systems of government hiring

Recommendation:

Establish, maintain and strengthen the systems of government hiring of public servants, when applicable, that assure the openness, equity and efficiency of such systems.

73. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, p. 26, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

74. The references to sections that appear in parenthesis in the recommendations and measures transcribed in italics herein, refer to the report from the Second Round of Review.

Measures suggested by the Committee:

- a. *Adopt, through the appropriate legislative and/or administrative procedures, provisions that explicitly provide that government hiring into the Public Service is to be based on the principle of merit and set out criteria upon which the evaluation will be made. (See Section 1.1.2. of Chapter II of this report);*
- b. *Consider the necessity of making examinations and/or interviews a mandatory requirement for all or some of the posts in the public service and also to establish mechanisms that provide clearly defined criteria on the manner in which these examinations and interviews would be carried out. (See Section 1.1.2. of Chapter II of this Report);*
- c. *Adopt, through the appropriate legislative and/or administrative procedures, provisions that set out clear parameters on the conditions for the use of temporary appointments, including definitions of the terms “temporary or seasonal nature” and the term “urgent”; provide limits to their duration and require written reasons for the decision. (See Section 1.1.2. of Chapter II of this Report);*
- d. *Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for the advertisement of hiring opportunities for vacancies within the public service, and ensuring that use is made of the mass media (e.g. newspapers or web pages) when advertising outside the Public Service. (See Section 1.1.2. of Chapter II of this report);*
- e. *Adopt, through the appropriate legislative and/or administrative procedures, mechanisms that provide clearly defined criteria for challenging the substantive aspects of the hiring process. (See Section 1.1.2. of Chapter II of this report);*
- f. *Adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of judicial and legal officers, based on the principles of merit and equality, setting out the criteria upon which the evaluation will be made and provide clearly defined criteria on the manner for the advertisement of posts. (See Section 1.1.2. of Chapter II of this report);*
- g. *Adopt, through the appropriate legislative and/or administrative procedures, provisions that regulate the hiring of public servants serving in the offices of the Auditor General, based on the principles of merit and equality, providing clearly defined criteria on the manner for carrying out examinations and the advertisement of posts. (See Section 1.1.2. of Chapter II of this report).*

[205] With respect to measure (a) of the foregoing recommendation, the country under review presents the following information:⁷⁵

[206] *“Guyana’s Public Service Rules 1987 and the Public Service Commission Rules 1998 in relation to other public sector entities require that the system is fair, transparent and based on merit. Guyana reiterates there is a complaints mechanism to the Public Service Commission and to the constitutional*

75. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 27, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

provided Human Rights Commissions (Ethnic Relations and Women and Gender Equality Commission) as well as a recourse to the courts."⁷⁶

[207] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (a) of the foregoing recommendation, taking into account that it did not find in the information available to it, a provision which makes it explicitly clear that selection into the Public Service is based on merit nor did it set out criteria upon which the evaluation will be made.⁷⁷

[208] With respect to measure (b) of the foregoing recommendation, the country under review presents the following information:⁷⁸

[209] *"Guyana has already indicated that the PSC Rules 1998 provide for this and where applicable this is done for senior positions when required but it does not agree that this should be instituted across the board and for all applicants to the public service. Further Guyana in its September 2009 progress report included the issue of the paucity of available skills."*

[210] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (b) of the foregoing recommendation, taking into account that Sections 22(1) and (2) of the Public Service Commission Rules (1998) do not detail the mechanisms that provide clearly defined criteria on the manner in which the examinations and interviews are to be carried out.⁷⁹

[211] With respect to measure (c) of the foregoing recommendation, the country under review presents the following information:⁸⁰

[212] *"Guyana reiterates what it stated in the September 2009 progress report that the PSC no longer hires temporary staff and other information it provided. Guyana emphasizes that in 2007 the PSC delegated its authority as provided for in the constitution to Permanent Secretaries, Heads and Regional Executive Officers as Chief Accounting Officers, to appoint certain categories of officers on the GS 1 and GS 2 salary scales by way of contract/gratuity. The probationary period for the first appointment into the service is still in force."*

[213] *It should be noted that employees in the public sector can elect to be placed on contract or on the fixed establishment.*

76. The country under review informed the following, on March 17, 2011: *"all posts in the public service have a job description and job specification which defines qualifications, terms of reference, reporting mechanism, etc. These are used when advertising internally in the public service and externally."*

77. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 4,

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

78. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pg. 27, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

79. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 4,

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf. The Committee takes note that the legislation cited was not made available for review by the Committee during the Second Round. Nevertheless, it is being cited here although the legislation was in force prior to the date this topic was reviewed.

80. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pgs. 27-28, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

[214] *Guyana has developed administrative guidelines which all Permanent Secretaries and Heads of Department are fully au fait with and must comply. There have been a number of cases in recent times where Permanent Secretaries and Project managers of Project Execution Units have been surcharged.*”

[215] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (c) of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into the account that the Public Service Rules themselves still do not limit the duration of the temporary appointment as well as the parameters that define ‘temporary or seasonal nature’ and ‘urgent’, nor does it require that written reasons be provided for the decision of the Permanent Secretary or the Secretary of the Public Service Commission to employ additional staff temporarily.⁸¹

[216] With respect to measure (d) of the foregoing recommendation, the country under review presents the following information:⁸²

[217] *“Guyana is in compliance with this. In addition to advertisement of posts internally in the public service and in the newspapers, since August 2008 the Public Service Commission, as well as the Police and Teachers’ Service Commissions, now place full page ads in all the newspapers declaring all the new appointees for each of the posts, promotions, dismissals, transfers. This allows for the public to be better informed and in the case of any dissatisfaction people can make complaints.*

[218] *One of the major developments since 2009 has been the development of the country’s ICT Strategy with somewhat improved connectivity thereby allowing government agencies to establish websites which provide valuable information to the public as well as place advertisements for vacancies. A quick perusal of some of these websites may be helpful. To further transparency, the government announced the establishment of the e-procure website (www.eprocure.gov.gy) which includes notices for the delivery of goods and services as well as posting of vacancies in the public sector. See 4.2 in this progress report on the First Round review.*”

[219] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (d) of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into the account that the vacancies in the public sector are now published under the new e-procure website (www.eprocure.gov.gy) but that the establishment of clearly defined criteria for the advisement of hiring opportunities is still pending.⁸³

[220] With respect to measure (e) of the foregoing recommendation, the Committee notes, as a step which contributes to progress in its implementation, the following:

81. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 4, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

82. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 28, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

83. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 4, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

[221] ▪ The enactment of the Judicial Review Act 2010, on November 2nd 2010, which allows a person whose interests are adversely affected by an administrative act or omission to file an application for judicial review with the Court.⁸⁴

[222] The Committee takes note of the step taken by the country under review to advance in its implementation of measure (e) of the foregoing recommendation, taking into account that there is still a need for those who are outside of the public service to challenge the substantive aspects of the hiring process for public servants through the administrative route.

[223] With respect to measure (f) of the foregoing recommendation, the country under review presents the following information:⁸⁵

[224] *“In keeping with this recommendation Guyana has completed its consideration of new Rules for the Judicial Service Commission in regard to appointments, transfers, etc and a draft Code of Conduct for Judicial officers. These are expected to be laid in the National Assembly after it reconvenes(sic) after recess in October 2010.”*⁸⁶

[225] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (f) of the foregoing recommendation as well as the need for it to continue to give attention thereto.

[226] With respect to measure (g) of the foregoing recommendation, the country under review presents the following information:⁸⁷

[227] *“Guyana reiterates that the Audit Act, No. 5 of 2004, [Sections 3 and 9] addresses the issue of the appointment and removal of the Auditor General as prescribed in Article[s] [204 and] 225 of the Guyana Constitution (...). Section 13 addresses the issue of the employment of officers and employees of the Audit Office under the Rules, Policies and Procedures Manual, posted on the Audit Office of Guyana website [www.audit.org.gy]. Job vacancies are posted on that website. Filling of Senior Offices posts in the AOG are subject to the approval of the Parliamentary Public Accounts Committee. Section 15 explicitly states that employment must be based on merit, fair and equitable treatment. The complaints mechanism of a disgruntled employee [is addressed by the disciplinary committee established in accordance with the Policy and Procedure Manual].”*

[228] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (g) of the foregoing recommendation, taking into account that the reason behind the measure was the absence of laws or regulations on the recruitment of posts in the

84. On February 11, 2011, the country under review submitted this new legislation which was adopted subsequent to the deadline for submitting its response to the questionnaire for the Third Round. This new legislation has been taken into account because it satisfies the requirements established by the *“Methodology for the Review of the Implementation of the Provisions of the Inter-American Convention against Corruption Selected in the Third Round and for Follow-up on the Recommendations Formulated in the Previous Round”*. The Judicial Review Act is available at:

http://www.oas.org/juridico/english/mesicic3_guy.htm.

85. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 29, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

86. The country under review informed the following, on March 17, 2011: *“The new Judicial Service Rules 2010 No. 2 of 2010 were passed in the National Assembly by affirmative motion on November 11, 2010. These Rules include the Code of Conduct in the body of the Rules.”*

87. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 29, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

office of the Auditor General and that the aforementioned “Rules, Policies and Procedures Manual” could not be found on the Audit Office of Guyana website, www.audit.org.gy.ⁱⁱ

1.2. Government systems for the procurement of goods and services

Recommendation:

Promote the adoption of provisions, in the government systems for the procurement of goods and services, which ensure the principles of openness, equity and efficiency under the Convention.

Measures suggested by the Committee:

- a. *Develop and implement provisions that punish public officials in cases of non-compliance with the public procurement rules, without prejudice to any other laws under the existing system. (See Section 1.2.2. of Chapter II of this Report).*
- b. *Establish the Public Procurement Commission or another independent body responsible for monitoring public procurements and procedures, in order to ensure that the procurement of goods and services and the execution of works are done in a fair, transparent, competitive and cost-effective manner. (See Section 1.2.2. of Chapter II of this Report).*
- c. *Establish a national registry of contractors of works, goods or services, mandatory to all State bodies, which contemplate the possibility of ensuring that the registry also includes a list of sanctioned contractors, in order to foster the principles of openness, equity and efficiency provided for in the Convention. (See Section 1.2.2. of Chapter II of this Report).*
- d. *Implement a mechanism, through legislative and/or administrative means, to facilitate the exclusion and/or sanction of certain contractors for stipulated reasons. (See Section 1.2.2. of Chapter II of this Report).*
- e. *Develop and implement provisions that establish the ineligibility of bidders or contractors who have ties to the procuring entity or who are directly involved in the determination of needs or specifications, appraisal of bids, selection of alternatives, or approval of purchases or payments. (See Section 1.2.2. of Chapter II of this Report).*
- f. *Implement provisions that require prior planning sufficiently in advance of the launch of procurement process, such as preparing studies, designs and technical evaluations, and to assess the appropriateness and timeliness of the purchase. (See Section 1.2.2. of Chapter II of this Report).*
- g. *Implement provisions that establish minimum time limits for the publication of tendering opportunities in appropriate media. (See Section 1.2.2. of Chapter II of this Report).*
- h. *Strengthen and increase the scope of use of electronic forms of communications, such as the internet, for publicizing the tender opportunities, status of bids and awards and the progress in the execution of major projects. (See Section 1.2.2. of Chapter II of this Report).*
- i. *Develop and implement electronic procurement systems, so that the acquisition of goods and services may be carried out through those means. (See Section 1.2.2. of Chapter II of this Report).*

- j. *Implement provisions that provide for objective selection factors or criteria in the evaluation of bids, including those for public works. (See Section 1.2.2. of Chapter II of this Report)*
- k. *Implement provisions that require that the outcome of a bid evaluation be clearly and accurately substantiated, when applicable. (See Section 1.2.2. of Chapter II of this Report)*
- l. *Implement provisions that facilitate the participation of citizen oversight mechanisms in monitoring the execution of contracts where their nature, importance or magnitude so warrants, in particular public works contracts. (See Section 1.2.2. of Chapter II of this Report)*
- m. *Harmonize the provisions contained in the Procurement Act and in the Regulations which allow challenges to the procurement process at the administrative level (See Section 1.2.2. of Chapter II of this Report).*
- n. *Maintain and publish statistics that reflect the nature of contracts awarded, the proportion that is by public tender, the proportion that is by restricted tendering, request for quotations and single source procurement. (See Section 1.2.3 of Chapter II of this Report).*

[229] With respect to measure (a) of the foregoing recommendation, the country under review presents the following information:⁸⁸

[230] *“Permanent Secretaries are surcharged when there is breach of these rules: in the case of abuse or corruption, persons have been charged and brought before the courts. In a number of instances in the last year, Permanent Secretaries/project managers have been surcharged. In addition, one Regional Executive Officer, a number of Customs Officers and policemen have been charged and are before the courts.*

[231] *The intelligence hotline to allow for anonymity through the Guyana Revenue Authority’s website www.revenuegy.org proves useful to exposing corruption as well as the invitation to public to suggest an audit on the website for the Audit Office of Guyana.”*

[232] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (a) of the foregoing recommendation, taking into account that the reason behind the measure was the absence of provisions establishing sanctions for government servants and employees who fail to fulfill or infringe upon the public procurement rules.⁸⁹

[233] With respect to measure (b) of the foregoing recommendation, the country under review presents the following information:⁹⁰

[234] *“Guyana reiterates its response in its September 2009 progress report that the National Procurement and Tender Administration is the national authority provided for in the Procurement Act. The Public Procurement Commission once established under the Procurement Act would oversight the*

88. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 29, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

89. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 8, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

90. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 30, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

NPTA but the procurement of goods and services as established will continue to be implemented by the NPTA as provided for in the said statute.

[235] *The establishment of the PPC is through a parliamentary mechanism through the Public Accounts Committee and efforts to reach consensus on nominations to the Public Procurement Commission are on-going.*

[236] *The Ministerial (sectoral) tender boards, Regional tender Boards and the local government bodies tender boards are (sic) have guidelines in relation to their limits and procedures. Sole sourcing must receive the approval of the NPTA and Cabinet with justification and select /restricted tenders as specified in the Procurement Act.”*

[237] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (b) of the foregoing recommendation, taking into account that the measure refers specifically to the establishment of the Public Procurement Commission or another independent body responsible for monitoring public procurement processes.⁹¹

[238] With respect to measure (c) of the foregoing recommendation, the country under review presents the following information:⁹²

[239] *“Guyana reiterates that the Procurement Act 2003 and regulations do not make such provisions. Under Section 6, allows for the rejection of a contractor who fails to fulfill those requirements of eligibility. The courts are used to bring contractors to account for poor performance and the public’s knowledge.*

[240] *From time to time for foreign funded programmes, there is a system of prequalified contractors which require the approval of the donor agency as well as their approval of the awardees before it is sent to cabinet for ‘No objection’.*

[241] *Guyana passed an amendment to the National Insurance Scheme Act in 2009 making it obligatory for contractors desiring to bid for contracts in the state sector to also be in compliance with the NIS requirements.*

[242] *Guyana reiterates that its emphasis is on encouraging the creation of more entrepreneurs throughout the country and to facilitate the development of their capacity to contribute to economic growth and generate economic activity across the ten Administrative Regions. In this process some will fail and others will grow.”*

[243] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (c) of the foregoing recommendation, taking into account that the measure refers to the establishment of a national public registry of providers, which could contain

91. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 9,
http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

92. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 30, available at:
http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

data on contractors' record of performance or nonperformance; area of work and/or specialty; technical and economic capacity; type of firm; and other information considered relevant.⁹³

[244] With respect to measure (d) of the foregoing recommendation, the country under review presents the following information:⁹⁴

[245] *“Guyana reiterates that the Procurement Act 2003, Section 5 stipulates the grounds for eligibility and ineligibility for contractors or persons to bid. In other sections, it stipulates the mechanisms for rejection of a bid and the complaints mechanisms.”*

[246] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (d) of the foregoing recommendation, taking into account that the information presented is not additional to that already analyzed in the report of the Second Round.

[247] With respect to measure (e) of the foregoing recommendation, the country under review presents the following information:⁹⁵

[248] *“Guyana is of the view that Section 60 (3) (4) of the Regulations to the Procurement Act 2003 addresses the issue of conflict of interest and sanctions. Section 55 (1-6) addresses the issue of confidentiality of information attending the procurement process by public officers and members of procurement entities and the consequential sanctions”.*

[249] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (e) of the foregoing recommendation, taking into account that the information presented is not additional to that already analyzed by the Committee in the report of the Second Round and that the measure refers specifically to the ineligibility of bidders or contractors who have ties to the procuring entity and not to the bodies under the scope of Article 60 of the Procurement Act 2003, such as the Evaluation Committee.⁹⁶

[250] With respect to measure (f) of the foregoing recommendation, the country under review presents the following information:⁹⁷

[251] *“The preparation of the national budget requires that the agencies provide the Budget Office with the profiles of the capital works and services for the coming year. On technical projects, studies and designs are required before going to tender and include an engineer's estimate and specifications for the profile. Where required consultants are hired to prepare the technical specifications for the tender profile. Approval to proceed to tender by an agency has to be obtained from the Budget Office which considers such requests at bi-monthly meetings with the agencies which must also submit their projections of implementation of their programmes and budgetary releases.”*

93. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 9,

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

94. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pg. 30, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

95. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pg. 31, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

96. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 9,

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

97. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pg. 31, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

[252] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (f) of the foregoing recommendation, taking into account that the information presented does not indicate which legislation establishes the aforementioned requirements.⁹⁸

[253] With respect to measure (g) of the foregoing recommendation, the country under review presents the following information:⁹⁹

[254] *“Unless there is an emergency such as a disaster (fire, flood, epidemic, security) the minimum period is two weeks.”*

[255] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (g) of the foregoing recommendation, taking into account that the information presented does not indicate which legislation establishes the aforementioned minimum period, since neither the Procurement Act 2003 nor its Regulations prescribe minimum time limits for the publication of tendering opportunities.¹⁰⁰

[256] With respect to measure (h) of the foregoing recommendation, the country under review presents the following information:¹⁰¹

[257] *“Guyana reiterates that this is being done for large (over \$1MG approx 5,000USD) tenders and that in addition to advertisement in the media, Guyana is making efforts to improve connectivity through the provision of two fibre optic cables. Guyana holds to the view that improving the competitive environment between bidders and reducing opportunities for monopolization of the tender awards by a few companies is best for the development of the country. As reported earlier in this progress report Guyana has introduced an eprocurement website as August 11, 2010 on which all notices of tenders, advertisements, advisories and vacancies are being posted.”*

[258] The Committee takes note of the satisfactory consideration, by the country under review, of measure (h) of the foregoing recommendation, especially with regard to the establishment of Guyana’s new e-procurement portal: <http://eprocure.gov.gy>.

[259] With respect to measure (i) of the foregoing recommendation, the country under review presents the following information:¹⁰²

[260] *“As pointed out during the 2nd round review, the entire country is not connected, the media, websites, are all used as well as public tenders in small communities through their means of communication. However as August 11, 2010 the new eprocurement website has been launched and operational (sic).”*

98. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 9,

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

99. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 31, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

100. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 9,

http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

101. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 31, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

102. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 32, available at:

http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

[261] The Committee takes note of the steps taken by the country under review to advance in its implementation of measure (i) of the foregoing recommendation as well as the need for it to continue to give attention thereto.

[262] With respect to measure (j) of the foregoing recommendation, the country under review presents the following information:¹⁰³

[263] *“Guyana repeats that standard bidding documents are in place and used for tenders at different sizes, types and scope. These are posted on the NPTA website and other government agencies websites.*

[264] *Standard evaluation guidelines have been developed by the NPTA specific to the type of tender, monies and technical specifications involved. In keeping with the donor funded programmes, the criteria are based on the requirements of the given donor agency. Guyana reiterates that an examination of the NPTA website SBDs (Standard Bidding Documents) will provide evaluation formats, SDBs for various tenders etc.”*

[265] The Committee takes note of the satisfactory consideration, by the country under review, of measure (j) of the foregoing recommendation.¹⁰⁴

[266] With respect to measure (k) of the foregoing recommendation, the country under review presents the following information:¹⁰⁵

[267] *“Guyana reiterates that all the bids are publicly opened at a set time and date in the presence of all the bidders and there is a public check to ensure that all necessary documents are submitted with the bids. The criteria are identified to the bidders. The same holds for the outcome of a bid evaluation, the bidders that were not awarded are advised within 7 days of the award and the minutes are posted on the NPTA website. The awardees for each tender that has received a ‘No objection’ from Cabinet are publicly announced in the media on a weekly basis. Due to poor response or unsatisfactory responses tenders are re-advertised.”*

[268] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (k) of the foregoing recommendation, taking into account that the information presented is not additional to that already analyzed in the report of the Second Round and that, in the aforementioned report, the Committee noted that the Procurement Act did not expressly regulate the power to award contracts nor did it require that the outcome of a bid evaluation be substantiated clearly and accurately, especially when the procuring entity did not agree with the Evaluation Committee’s determination of the lowest evaluated bidder [Procurement Act, Article 39(3)].¹⁰⁶

103. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 32, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

104. The information on the Standard Bidding Documents can be found on the Report of the Second Round, however it was not analyzed then because it was submitted after the deadline for submitting the response to the respective questionnaire had lapsed. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 10, *footnote #7*, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

105. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 32, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

106. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 10, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

[269] With respect to measure (l) of the foregoing recommendation, the country under review presents the following information:¹⁰⁷

[270] *“On a weekly basis all the tenders which Cabinet has given a ‘No Objection’ to in keeping with the Procurement Act 2003 are announced to the media and carried in the newspapers and on the air. The media and citizens can and do publicly bring to the NPTA or the given sector their concerns about the process of awarding the tender.*

[271] *Communities are alert to their role and express their views in the media or to their elected representatives regarding the performance of the contractors carrying out works in their communities. Government policy requires that the contracts must be publicly posted in the local government or village office for the public in that area to be able to inspect the terms etc of the contract.”*

[272] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (l) of the foregoing recommendation, taking into account that, as stated in the report for the Second Round, the Committee has no specific information regarding provisions that allow for the establishment of citizen oversight mechanisms to monitor the execution of contracts where their nature, importance or magnitude so warrants, in particular public works contracts.¹⁰⁸

[273] With respect to measure (m) of the foregoing recommendation, the country under review presents the following information:¹⁰⁹

[274] *“This is under review.”*

[275] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (m) of the foregoing recommendation.

[276] With respect to measure (n) of the foregoing recommendation, the country under review presents the following information:¹¹⁰

[277] *“The NPTA website posts by sector the number of awards, the value of the award, the name of the contractor, etc., Guyana has not advanced to the level recommended in (n) but it is working towards it.”*

[278] The Committee takes note of the need for the country under review to give additional attention to the implementation of measure (n) of the foregoing recommendation.

107. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 32, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

108. See: Report on Implementation in the Co-operative Republic of Guyana of the Inter-American Convention against Corruption Provisions Selected for Review in the Framework of the Second Round, pg. 10, http://www.oas.org/juridico/english/mesicic_II_inf_guy_en.pdf

109. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 32, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

110. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 33, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

2. SYSTEMS FOR PROTECTING PUBLIC SERVANTS AND PRIVATE CITIZENS WHO IN GOOD FAITH REPORT ACTS OF CORRUPTION (ARTICLE III (8) OF THE CONVENTION)

Recommendation:

Adopt a comprehensive legal and regulatory framework that provides protection for public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with its Constitution and the basic principles of its domestic legal system. (See section 2.2 in Chapter II of this Report).

Measures suggested by the Committee:

- a. Protection for persons who report acts of corruption subject to investigation in administrative or judicial proceedings;*
- b. Protection of whistleblowers and their families, not only in relation to their physical integrity but also as it concerns the workplace, especially when the person is a public official and the acts of corruption involve superiors or co-workers;*
- c. Expand the existing mechanisms for reporting, such as anonymous reporting or protection of identity reporting, that guarantee the personal security and the confidentiality of the identity of public servants and private citizens who, in good faith, report acts of corruption;*
- d. Creation of mechanisms to report any threats or reprisals against whistleblowers, stating the appropriate authorities to process protection requests and the bodies responsible for providing it;*
- e. Witness protection mechanisms that offer witnesses the same guarantees as public servants and private citizens;*
- f. Mechanisms to facilitate international cooperation on the foregoing matters, when appropriate, including the technical assistance and cooperation provided for by the Convention, as well as the exchanges of experiences, training, and mutual assistance.*
- g. A simple whistleblower protection application process.*
- h. Provisions which provide for administrative and criminal sanctions for the failure to observe the rules and/or duties relating to protection.*
- i. Provisions that clearly delineate the respective competence of judicial and administrative authorities with respect to this area.*

[279] With respect to measures (a), (b), (c), (f), (g), (h) and (i) of the foregoing recommendation, the country under review presents the following information:¹¹¹

111. See: the Co-operative Republic of Guyana's response to the Third Round questionnaire, pgs. 33-34, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

[280] *“Guyana does offer protection to the best of its ability and in keeping with available resources. The Guyana Chapter of the Crime Stoppers and the GRA intelligence hotline provide anonymity to the callers who provide valuable information on fighting crime and in particular corruption.*

[281] *Under the new Anti-Money Laundering and Countering the Financing of Terrorism Act 2009, section 11 gives protection from criminal or civil liability for sharing information with the Financial Intelligence Unit. Section 5 makes ‘Tipping off’ the accused based on knowledge that a disclosure has been made by a person to the FIU an offence.*

[282] *New legislative reforms such as the Evidence Act No 19 of 2008 provides for the use of audio-visual links up in the courts to allow for the protection of witnesses. The provision of safety of witnesses for the identification of the accused such as the construction of two way mirrors in police stations under the IDB/GOG Citizen Security Programme offer better protection of witnesses than 2 years ago.*

[283] *Whistle blower legislation is being drafted and a draft bill on Witness protection is also under consideration. Guyana is using the model legislation developed by the OAS on whistle blowers as a guide.*

[284] *Guyana is as large as England and Scotland with a small population and there are serious challenges to do more than what it is doing now, changing identities or offering expansive witness protection systems are not feasible at this time.*

[285] (...)

[286] *Guyana is interested in exploring different models of a simplified witness protection system and whistle blower legislation and would be interested in receiving technical assistance in order to do same.”*

[287] The Committee takes note of the steps taken by the country under review to advance in its implementation of measures (a), (b), (c), (f), (g), (h) and (i) of the foregoing recommendation as well as the need for it to continue to give attention thereto, taking into account that a comprehensive whistleblower and witness protection legislation is still under consideration.

[288] With respect to measures (d) and (e) of the foregoing recommendation, the country under review presents the following information:¹¹²

[289] *“In response to (d) and (e), Guyana enacted the Evidence (Amendment) Act 2008, Act No. 19 of 2008, to allow for the use of and provision of facilities for audio-links in the court room in order to protect the identity of the witness, to reduce intimidation or fear of appearing in the court with the perpetrator. Whilst this legislation is not designed exclusively for whistle blowers it provides one more layer of protection that did not exist in June 2008.*

[290] *The Director of Public Prosecutions can apply to the courts for a protection order etc and the Police must comply”.*

[291] The Committee takes note of the step taken by the country under review to advance in its implementation of measures (d) and (e) of the foregoing recommendation as well as the need for it to

112. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 34, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf.

continue to give attention thereto, taking into account that a comprehensive whistleblower and witness protection legislation is still under consideration.

3. ACTS OF CORRUPTION (ARTICLE VI(1) OF THE CONVENTION)

Recommendation 3.1:

Modify Section 338 (2) (a) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(a) of the Convention, by incorporating therein, the elements of directly or indirectly accepting a bribe by a public servant or soliciting it. (See Section 3.2. of Chapter II of this Report).

Recommendation 3.2:

Modify Section 338 (2) (b) of the Criminal Law Offences Act, so as to make it more fully consistent with Article VI(1)(b) of the Convention, by incorporating therein, the elements of directly or indirectly offering a bribe to a public servant. (See Section 3.2. of Chapter II of this Report).

Recommendation 3.3:

Criminalize those who act as accessories after the fact with respect to corruption offenses, as required by Article VI(1)(e) of the Convention. (See Section 3.2. of Chapter II of this Report).

[292] With respect to recommendations 3.1, 3.2, and 3.3, in its response, the country under review presents the following information that it considers related:¹¹³

[293] *“Guyana has reviewed the recommendations at 3.1, 3.2, 3.3 and is of the view that the Criminal Law Offences Act, Sections 338, 333, 334, 335, and Sections 24, 26, 27, 31 and 33 are in compliance.*

[294] *The new comprehensive Anti-Money Laundering and Countering of Financing of Terrorism Act 2009 (which repealed the Prevention of Money Laundering Act) strengthens the legislative framework on acts of corruption and allows for asset forfeiture and international cooperation on such matters (see Part VI section 76, International Cooperation), Part VIII (civil forfeiture) and Second Schedule Serious Offences”.*

[295] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendations.

4. GENERAL RECOMMENDATIONS

Recommendation 4.1:

Design and implement, when appropriate, training programs for public servants responsible for implementing the systems, standards, measures and mechanisms considered in this Report, for the purpose of guaranteeing that they are adequately understood, managed and implemented.

[296] With respect to recommendation 4.1, in its response, the country under review presents the following information:¹¹⁴

113. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 36, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

[297] “*On going (sic)*”.

[298] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendation, bearing in mind that it has not received information on training programs for public officials.

Recommendation 4.2:

Select and develop procedures and indicators, when appropriate and where they do not yet exist, to analyze the results of the systems, standards, measures and mechanisms considered in this Report, and to verify follow-up on the recommendations made herein. (see Sections 1.1.3, 1.2.3, 2.3 and 3.3 of Chapter II of this Report).

[299] With respect to recommendation 4.2, in its response, the country under review presents the following information:¹¹⁵

[300] “*Through the Millennium Challenge Threshold Programme advances have been made in creating computerized data collection and data analysis systems*”.

[301] The Committee takes note of the need for the country under review to give additional attention to the implementation of the foregoing recommendation, bearing in mind that it has not received detailed information on progress regarding procedures and indicators for follow-up on the implementation of the Convention.

114. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 36, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

115. See: the Co-operative Republic of Guyana’s response to the Third Round questionnaire, pg. 36, available at: http://www.oas.org/juridico/english/mesicic3_guy_resp.pdf

ENDNOTES

ⁱ The country under review informed the following, on March 17, 2011: *“In addition, the Examinations Department of the Revenue Authority is responsible for examining returns filed together with supporting documents to verify the accuracy and veracity of the contents therein which includes claims made for expenses incurred. In addition the Audit and Verification Department has a similar responsibility to examine records maintained by taxpayers to ascertain whether expenses claimed may be substantiated by the relevant supporting documents. The staff of both of these departments is trained to detect these issues. However, the Revenue Authority has the Tax Advisory and Services Division whose mandate is to disseminate information relating to various tax issues and policies to departments of the Revenue Authority and the general public. This department may be tasked with the duty of preparing manuals and policies in relation to issues raised by the Committee. The Revenue Authority also has a Training and Development Unit which develops and delivers training programmes relevant to the exigencies of each department. This department is properly poised to execute any requirement of the Convention as it relates to education and training of staff.”*

“Furthermore, Guyana has provided information in its progress reports in relation to MESICIC Round II on the introduction in 2007 of a Total Revenue Integrated Processing System (TRIPS), new software that caters for valuation and clarification of all goods designed with risk profiling (to assist in uncovering/exposing corrupt practices in Customs) and the introduction of the Tax Payer Identification Number (TIN). This System maintains a comprehensive database of all taxpayers’ information and records which now(sic) for effective data consultation and cross-checking.”

ⁱⁱ The country under review informed the following, on March 17, 2011: *“The Rules, Policies and Procedures Manual 2004 Vol 1-4 as approved by the National Assembly were posted at the time of Guyana’s reporting, however, due to a problem with their server the Audit Office is now reposting a number of documents including these manuals which are voluminous. Other Manuals which have not required parliamentary approval and are not public documents are not posted on their website. As stated previously the Public Accounts Committee approves the staffing levels of the Audit Office at the senior levels with the approval of the National Assembly. Guyana reiterates that the PAC approves standardized job descriptions and the hiring of senior officers in the AOG.”*

“It should also be noted that the Audit Office has introduced a Forensic Audit Unit which carries out on the ground audits of the works programmes in the government and its agencies and has commenced in 2009 doing ‘value for money’ audits for the first time of which 2 have been completed and posted on their website.”

“The Audit Office of Guyana has annually submitting the audit of the country’s accounts which are tabled as public documents in the National Assembly and sent to the Public Accounts Committee for review. This is a vast improvement where for 10 years (1982-1991) there were no audit reports.”